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ARMY SERVICE FORCES
SEATTLE PORT OF EMBARKATION
SEATTLE, 4, WASHINGTON

General Court Martial
Fort Lawton Staging Area
Fort Lawton, Washington

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Fort Lawton Staging Area,
Fort Lawton, Washington,
1 December 1944

The Court reconvened at 9:00 a.m., 1 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show that each of the accused is present, all members of the Court present at adjournment are present this morning, that the members of the personnel representing the accused are present, as well as the personnel representing the prosecution.

The reporter was also present.

Captain S. K. Tyson, Inspector General's Department, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Give us your name, your rank, your assignment and your station, please.

A S. K. Tyson, Captain, Inspector General's Department, Seattle Port of Embarkation.

Q Are you in the office of the Inspector General of the Seattle Port of Embarkation?

A I am.

Q And how long have you fulfilled that assignment, Captain Tyson?

A Since the 21st of July, 1943.

Q Do you recall the incident on August 14, 1944, when some Negro soldiers entered the Italian area at Fort Lawton?

A I do.

Q Were you or not called upon at any time to participate in an investigation that was conducted of that affair?

A I was.

Q In connection with that investigation state whether or not you had occasion to be present when the accused Willie Prevost, Sr., was interviewed.

A Yes, sir, I was.

Q By whom was he interviewed at the time you were present?

A Lt. Colonel Curtis L. Williams, Inspector General's Department.

Q Do you recall whether or not anyone else was present at that time?

A Yes, sir, Lt. Colonel Jaworski.

Q Will you tell the Court what, if anything, took place upon the conclusion of Colonel Williams' interview of the accused Willie Prevost?

A Prevost was asked whether he wanted to make an additional written statement and his answer was that he did.

Q Was or not that statement to be in his own handwriting?

A The statement was to be in his own handwriting.

Q Now after the accused Prevost said that he did want to make such a statement, what, if anything, was said by Colonel Williams?

A He was informed that it was not necessary to make such a written statement and that if he did make such statement it might be used against him.

Q Did the accused Willie Prevost thereafter make a written statement?

A Yes, sir, he did.

Q To whom was that written statement delivered?

A To Colonel Jaworski.

Q Will you tell the Court what the facts and circumstances were in connection with the delivery of that statement and what, if anything, was said to the accused Prevost prior to the delivery of the statement?

A Prevost, while finishing his statement in another room, was asked if he wanted to, or if he would identify another accused, and was brought into the room where the other accused was being interviewed --

Law Member: Don't mention any names here.

The Witness: No.

A -- (continuing) and at that time he handed the statement over to Colonel Jaworski, but before accepting it the Colonel stated that Prevost did not have to give him that statement.

Q All right. Now, what did Prevost say when he was told that he didn't have to give that statement? First, let me ask you this. Do you recall whether that was all that I said or do you remember whether I said anything other than that also?

A Yes. He was again warned that the statement might be used against him at some future time.

Q All right. Did he or not deliver the statement?

A Yes, he did.

Q Now, Captain Tyson, prior to the time that Colonel Williams asked Prevost any questions on that occasion was he or not advised of his rights?

A What was that question?

Q Was he prior to the time that Colonel Williams interviewed Prevost on that occasion, was he or not advised of his rights under Article of War 24?

A Yes, at the very beginning of the statement, the oral statement that he gave Colonel Williams, he was apprised of his rights under Article of War 24.

Defense: I think that is a conclusion of the witness, if the Court please, and I move to strike it. It is for the Court to determine whether this accused was apprised of his rights, and the witness should testify as to what was said and the Court then determine whether he was properly advised of his rights.

Law Member: Objection overruled.

Q Now, Captain Tyson, you have related to the Court an incident where Prevost came in and identified another accused, and you related some of the conversation that took place. I wish you would tell the Court what it is, if anything, that fixes that matter particularly in your mind.

A I remember Prevost particularly for two reasons. First his manner of announcing his name as Willie Prevost, Sr., with the emphasis on the Sr.; secondly, the accused whom he identified got very irrate and turned to him and said, "Boy, what do you want; a medal?"

Q And that particular portion of the conversation also impressed you, or also the incident impressed you?

A It has been particularly outstanding in my memory.

Q Now, during the course of Colonel Williams' interview did anyone, either Colonel Williams or anyone else, at any time undertake to get Prevost to change his statement?

A No, not in my presence, and I believe I was present during the entire interview.

Q All right. Now, did anyone, Colonel Williams or anyone else, ever say to the accused Willie Prevost that the Court would not accept the statement as he had made it.

A No, sir.

Trial Judge Advocate: The prosecution has no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Captain, as I understand your testimony here, you have a clear and independent recollection of everything that transpired down there when Colonel Williams was interviewing Prevost without refreshing your recollection from anything, is that correct?

A I believe so.

Q You haven't refreshed your recollection at all before you came here this morning?

A No. I don't think that it was necessary.

Q All right. Now, were you present when Colonel Williams interviewed the accused Alston?

A When Colonel Williams interviewed?

Q Yes.

A Yes.

Q You were present at that time?

A When Colonel Williams interviewed.

Law Member: Did you get the last of that?

Defense: Alston is what I said.

The Witness: I thought you said also.

Trial Judge Advocate: I thought you said also.

Q Alston.

A No, I wasn't.

Q You weren't present?

A No.

Q Were you present when Colonel Williams interviewed the accused Barber?

A Yes, sir.

Q You were present at that time?

A Yes, sir.

Q What day did that interview take place?

A I am not entirely sure of the day or date, excepting that his first interview with Barber was within two days after he returned from overseas.

Q Within two days after he returned from overseas?

A That's right.

Q And who was present at the time he interviewed Barber?

A I beg your pardon.

Q I say who was present?
A Colonel Williams didn't interview Barber.

Q You were mistaken?
A Yes.

Q You want to correct the testimony?
A Yes, that's right.

Q That Colonel Williams was not present?
A That's right.

Q Colonel Williams was not present at that time that Barber may have been interviewed?
A That is correct.

Q All right. Were you present when Colonel Williams interviewed Basden?
A Yes, sir, I was.

Q You were present at that time?
A That's right.

Q Where did that interview take place?
A At the Intelligence and Security office at the Port.

Q At the Port. Did all the interviews take place there or were some held at other places?
A Some held at other places.

Q You remember the date that he interviewed Basden?
A No, sir, I don't.

Q You do not recall that?
A No, sir.

Q Was it before or after he interviewed Prevost?
A If I remember correctly, it was before.

Q How many days before?
A That I can't answer.

Q You can't answer. Now, who else was present when Basden was interviewed?
A At that time I believe that Colonel Jaworski was present and Major Manchester was present for a short time.

Q Did Colonel Jaworski have any conversation with Basden that day?
A Not that I recall.

Q You don't recall Colonel Jaworski advising Basden of his rights?
A There was no statement taken from Basden.

Q There was no statement taken from Basden. Well, did Colonel Williams --

Trial Judge Advocate: (Interrupting) In order to get that correct, do you mean a written statement?

The Witness: No written statement.

Q There was an oral statement?

A An oral statement, yes.

Q Did Colonel Williams advise Basden of his rights?

A The 24th Article of War. He did.

Q What did he say to Basden?

A I can't pretend to recall the words that he used. He did go on at some length to explain the 24th Article of War, and the witness said that he understood it.

Q Well, what did Colonel Williams say to Prevost in explaining his rights under the 24th Article of War?

A I again can't recall all the conversation, the words that were used.

Q Did he do more than read the 24th Article of War to him?

A Yes, he did.

Q Does that appear in the record down there that was made of the proceeding?

A A notation appears in the record the 24th Article of War was read and explained.

Q It appears in there that the 24th Article of War was read and explained?

A That's right.

Q That appears in there?

A That's right.

Q Does that appear in all of them?

A Yes, it does.

Q Does it show what explanation was given?

A No.

Q Well, was the explanation that Colonel Williams gave Basden longer than that which he gave to Prevost?

A That point I can't recall.

Q You can't recall. Anybody else that day give any explanation to Basden of his rights under the 24th Article of War other than Colonel Williams?

A Not that I recall.

Q Name the other accused, whom you recall, from whom a written statement was obtained at these interviews?

Trial Judge Advocate: What did you say? I didn't understand.

Defense: I said name the other accused from whom written statments were obtained at these interviews.

Trial Judge Advocate: If it please the Court, I don't think that is a proper question. It is obvious Counsel is trying to fish to see whom we have written statements from.

Law Member: Objection overruled. It is a question of testing the recollection of the witness.

Trial Judge Advocate: Well, all right. That is, if the witness knows.

A I remember the man Roy L. Montgomery; Snow gave a statement; Hughes. I don't recall any others. There were one or two others but I don't recall them.

Q You don't recall who they were?

A No.

Q Now with reference to Montgomery, you were in there during all of the time that Montgomery was interviewed?

A There were, I believe, either two or three interviews of Montgomery.

Q By Colonel Williams?

A Yes, and I don't believe that I was present during the entire time.

Q Were you present when a written statement was taken from Montgomery?

A Yes, sir, I was.

Q Who else was present?

A Colonel Jaworski was present at that time.

Q Colonel Jaworski was present?

A Yes.

Q Colonel Williams?

A Yes.

Q Yourself?

A Yes.

Q Anybody else?

A A reporter. A reporter was present in all these.

Q That is all?

A It was.

Q That is everybody was present?

A I beg your pardon. Major Manchester came in.

Q Oh, Major Manchester came in also. On that day who all warned Montgomery of his rights?

A Colonel Williams and Colonel Jaworski.

Q And Colonel Jaworski.

A Yes.

Q Major Manchester didn't?

A On the particular day the written statement was taken I am not sure whether Major Manchester did or not.

Q You are not sure of that?

A No, sir.

Q Your recollection with respect to Montgomery is not quite as good as your recollection with respect to Prevost, is that right?

A That is correct.

Q Now, what time during the course of Montgomery's interview did Colonel Williams warn him of his rights?

A He warned him under Article of War 24 at the very beginning of his oral statement.

Q At the very beginning?

A That's right.

Q Then he completed his oral examination?

A That's right.

Q Did Colonel Williams ever again warn Montgomery of his rights?

A He warned him before he took a written statement.

Q He warned him before he took a written statement?

A Yes.

Q It was Colonel Williams who took the written statement?

A The statement was taken at the conclusion of Colonel Williams' oral examination, and --

Q Now, was it Colonel Williams that took that statement?

A That is rather hard to explain --

Q Well, you were there, Captain; I wasn't.

A -- (continuing) in this respect. There were many witnesses to examine and when the oral investigation, oral examination was completed, the man was taken to another room and left to complete his written statement.

Q Let's stay with this case of Montgomery; that is the one we are talking about.

A All right. It was the same.

Q You made the statement Colonel Williams took the written statement. Is that a fact?

A In the manner in which I have just described. Colonel Williams and Colonel Jaworski were both present.

Q Colonel Williams and Colonel Jaworski were both present?

A That's right.

Q Well, who said anything to Montgomery about a written statement?

A Both Colonel Williams and Colonel Jaworski.

Q Both of them said it?

A Yes.

Q What did Colonel Williams say?

A I again can't recall the exact wording, but he was warned that it was not necessary to make a statement and it might be used against him.

Q Did Montgomery say out of a clear sky "I would like to make a written statement"?

A No, he was asked.

Q Well, who asked him; that is what I am trying to get at.
A I am not sure on that point. It was either Colonel Williams or Colonel Jaworski.

Q Who was it warned him of his rights; Colonel Williams or Colonel Jaworski?

A They both warned him. I don't believe there was a witness that wasn't warned by both men when they were present.

Q Well, either Colonel Williams or Colonel Jaworski asked Montgomery if he wanted to give a written statement?

A That's right.

Q And then they both warned him of his rights before he made it, is that correct?

A The usual procedure --

Q (Interrupting) I don't want the usual procedure. I want the procedure followed with respect to Montgomery.

Trial Judge Advocate: If it was the same procedure in all cases he has the right to recall that and so mention, I think. It depends on whether it was the same procedure or not.

Defense: I am not asking what was the usual, customary procedure to follow. He testified he was there that day. I am asking this witness what transpired. If he doesn't know, all he has to do is say so.

Law Member: Continue.

A Will you rephrase the question, Major?

Q No, I will have the reporter read it if you have forgotten it.

(Question read by reporter.)

Q You understand my question now, Captain?

A Yes, I do.

Q All right. Now please answer.

A The answer is I can't recall the exact wording or the exact action of either Colonel Williams or Colonel Jaworski in connection with Montgomery.

Q All right. Now, after Montgomery finished his written statement tell the Court what happened.

A I was not present when that was turned, that statement was turned in.

Q Oh, you weren't present then?

A No.

Q All right. By the way, what day was that?

A I don't recall the date.

Q Well, was it before or after Prevost was examined?

A I can only guess on that.

Q Well, I don't want your guess. You don't recall whether before or after?

A No.

Q Now, do you recall the date Snow was examined?

A No, I can't.

Q Was it before or after Prevost?

A I don't recall.

Q You don't recall that. Who was present at that time? I am speaking now of the time a written statement was taken.

A Colonel Jaworski, Colonel Williams, the reporter, myself. I am not sure whether Major Manchester came in during that interview or not.

Q Now who, if anyone, advised Snow of what his rights were under the 24th Article of War or otherwise?

A That day Colonel Williams advised him under the 24th Article of War prior to taking his oral statement.

Q What did Colonel Williams say to him?

A I again don't recall the exact wording.

Q Did he go into more detail with Snow than with Prevost?

A I don't know; but as in all cases, the witness --

Q (Interrupting) I am just asking you if he went into more detail with Snow than with Prevost. If you don't know, just

say so.
A I do not know.

Q All right. Now, who was it asked Snow if he wanted to make a statement, if anyone?
A I don't know.

Q You don't know. Before Snow gave a written statement was he warned of his rights under the 24th Article of War?
A That I don't know because I left the room to go on some other mission prior to the completion of Snow's testimony.

Q So you weren't there at the time Snow gave a written statement?
A No, I wasn't.

Q From your own knowledge you don't know he gave a written statement, do you?
A Other than I was told that he gave it.

Q Well, that is all you know about whether Snow gave a written statement or not is what somebody told you?
A That's right.

Q Is there anything else you testified to this morning based on what somebody told you, Captain?
A No. I might add that I have seen Snow's statement.

Q You have seen the statement somebody told you was Snow's is what you mean to say, isn't that right?
A That's right. I have seen his name on it.

Q You don't know who wrote that name, do you? You don't know who wrote that name?
A No. It could have been anybody.

Q You are a lawyer, aren't you, Captain?
A No, I am not.

Q Aren't you a lawyer? You have done a lot of this work, investigating type of work?
A That's correct.

Q All right. Now, when was Hughes examined?
A Upon his return from overseas.

Q Upon his return from overseas. That is comparatively recent?
A He was in the first group that came back from overseas.

Q Well, about what time was that, Captain?
A I don't recall. I believe it was early October or middle of October.

Q Well, it was after Prevost was examined?
A Oh, yes.

Q Now, were you present during all the time Hughes was examined?

A No, I wasn't.

Q You weren't present during all that period?

A No.

Q You are positive of that?

A That's right.

Q Were you present during the time that Hughes may have been asked if he wanted to give a written statement?

A Yes.

Q You were present at that time?

A Yes.

Q Who was it asked Hughes, as you recall?

A Colonel Jaworski.

Q Colonel Jaworski asked him?

A That's right.

Q Colonel Williams say anything?

A Colonel Williams was not present.

Q Colonel Williams was not present. Well, who was present?

A Major Manchester -- I am not sure that Major Manchester was present during the entire interview; in fact, there was two interviews, I believe, of Hughes -- Colonel Jaworski and myself.

Q Who was it originally questioned Hughes?

A And Captain Branand was on that list.

Q Captain Branand was also there?

A Yes.

Q Who was it questioned Hughes originally, if you recall?

A The three names I have already mentioned.

Q Well, I know, but somebody started off with Hughes, didn't they?

A The first interview the questioning was started off by Major Manchester.

Q Major Manchester warned Hughes of his rights, did he?

A Very definitely under the 24th Article of War.

Q Do you recall what Major Manchester said?

A No.

Q You don't recall. Did Colonel Jaworski take over the questioning on the case, if you recall?

A I don't recall, but I am sure that we all asked -- that all might have asked questions.

Q Did Colonel Jaworski also warn Hughes of his rights under the 24th Article of War and make any explanation to him?

A Not after Major Manchester had warned him.

Q Colonel Jaworski never at any time warned Hughes of his rights?

A Except to determine the accused actually knew or actually understood the 24th Article of War.

Q You definitely recall Colonel Jaworski asking Hughes whether he understood the 24th Article of War, is that right?

A Yes, at the first interview.

Q And what did Hughes say?

A He said that he did.

Q He said that he did. And nothing more was ever said to him after that; about his rights as a witness.

Trial Judge Advocate: You mean during that interview?

Defense: I think the witness understands.

Trial Judge Advocate: No, I don't. I think the witness has testified there was two interviews. I think Counsel ought to make his question explicit. If he was talking about the first interview, the witness is entitled to know it.

Law Member: I assume Counsel meant that particular time.

A Will you read that question again, please?

(Question read by reporter.)

Q Yes, that interview, Captain. I don't want to confuse you.

A If I remember correctly, he questioned him to see whether he understood his rights.

Q Well, was that at the early part of the time --

A Right at the very beginning.

Q Right at the very beginning?

A That's right.

Law Member: The beginning of the first interview?

The Witness: That is correct, the beginning of the first interview.

Q And is that when Colonel Jaworski also questioned him about his rights?

A That's right.

Q Was a written statement obtained at that interview?

A No.

Q Was it at a second interview?

A I believe actually it was the third interview.

Q There was a series of interviews?

A That's right.

Q Well, after that first interview was Hughes' rights ever explained to him again at any time?

A Before each additional interview.

Q Before each additional interview?

A That is correct.

Q Well, at the second interview who was it explained to him his rights?

A Colonel Jaworski.

Q Colonel Jaworski. And who was it at the interview at the time his statement was taken explained to him, as the case may be, what his rights were if you recall?

A I don't recall.

Defense: That is all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q There is one question, Captain Tyson. When Hughes was interviewed after the first time how did it happen that Hughes was again interviewed? Did we send for Hughes or how did it happen he was interviewed?

Law Member: Repeat the question.

(Question read by reporter.)

Defense: If you know of your own knowledge, Captain; not what somebody told you.

A Hughes asked to see Colonel Jaworski on the last interview. Whether that was the second or third, I am not sure.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Major Robert H. Manchester, Transportation Corps, a witness for the prosecution, again took the witness stand and testified further, as follows:

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You are reminded you are still under oath, Major.

A Yes, sir.

Q Major, I think you mentioned in the course of your testimony about a Mr. Peter Olson?

A I did.

Q Who was present at the time of the interview on September 5th of Willie Prevost Sr.?

A Yes, sir, I did.

Q Is Mr. Peter Olson still a member of your division, your department?

A He is.

Q Where is he at the present time?

A My understanding and my information, based on a letter I received from Mr. Olson, is that he is in California.

Q You received a letter in his own handwriting. Do you know his handwriting?

A Yes, sir, I do.

Q And where was it postmarked?

A It was postmarked from Los Angeles, California.

Q State whether or not he is over there on some official matter?

A He is not. He is there on extended leave.

Q And do you know the reason for that?

A The main reason is because he is married and his wife wanted to go there.

Law Member: Is there any issue about this, Major?

Defense: No, there is none.

Trial Judge Advocate: I just wanted to account for the absence of Mr. Olson. No further questions.

Defense: No questions.

President: The witness is excused.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: If the Court please, that completes our proof on that matter.

Defense: Before the matter is submitted for the Court's ruling, I would like the opportunity of conferring just briefly with the accused Prevost.

President: We will take just a brief recess.

Defense: I will take him outside.

President: All right.

The Court thereupon recessed at 9:35 o'clock a.m. and reconvened at 9:45 o'clock a.m., 1 December 1944.

President: Is the accused back in the room?

Defense: They appear to be all here, sir. Prevost is here, yes, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: Is the prosecution ready?

Trial Judge Advocate: Ready, sir.

President: The Court will come to order.

Trial Judge Advocate: Let the record show each of the accused is present, and all members of the Court and personnel representing the accused and the personnel of the prosecution are present.

The reporter was also present.

Defense: You were through, were you, Colonel Jaworski?

Trial Judge Advocate: I was, yes.

Defense: Prevost, will you come forward again, please.

T-5 Willie Prevost, Sr., Headquarters and Headquarters Detachment No. 2, Camp George Jordan, a witness for the defense, again took the witness stand and testified further, as follows:

REDIRECT EXAMINATION

Trial Judge Advocate: You are reminded you are still under oath, Corporal.

The Witness: Yes, sir.

REDIRECT EXAMINATION

Questions by Defense:

Q Prevost, you testified here the other day that you didn't know the name of the man who threw the rope at you.

A Yes, sir.

Q Since yesterday have you been able to identify that man?

A Yes.

Q You know his name?

A No, sir.

Q Will you stand over by the witness, Mr. Freeman? Turn around and face the witness. Prevost, will you tell the Court whether or not this is the man?

A Yes, he is.

Defense: That is all, Mr. Freeman. We can stipulate, can we not, that the man the witness just identified was Mr. Freeman who testified here yesterday?

Trial Judge Advocate: We can so stipulate.

Defense: That is all.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Corporal Prevost, this incident which you have testified to concerning Freeman throwing the rope, that took place on the 5th day of September, did it not, when you were first questioned?

A Yes.

Q And not in the questioning when Colonel Williams questioned you?

A No, sir.

Q Well at the time you wrote out in your own handwriting this statement?

A No, sir.

Q That was some twenty-five days later?

A That was afterwards, yes, sir.

Law Member: That is all.

RECROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Just one or two questions, Corporal. Now, when Mr. Freeman threw this rope, as you say he did, this stenographer who testified here yesterday, Mrs. Henderson, you saw her?

A Yes.

Q She was present, wasn't she?
A I don't recall, but I knew there was a stenographer present.

Q You know a stenographer was present but you don't recall her face?
A In fact, two of them.

Q One of them was the WAC sergeant who was here yesterday?
A Yes.

Q She was present when that happened?
A I couldn't recall whether two present.

Q Well, two ladies were present when that happened. And then Sergeant Young, who was here -- you saw him here yesterday?
A Yes, sir.

Q He was present when that happened too?
A Yes.

Q And you saw Sergeant Fiske here yesterday, didn't you?
A Yes.

Q And he was present when that happened?
A I recall seeing him but I didn't recall his name before I seen him.

Q But the Sergeant you saw here yesterday, who was referred to as Sergeant Fiske, he was present too?
A Yes, sir.

Q And then you saw that gentleman who testified here yesterday when the spectators were excluded from the court room?
A The civilian?

Q That civilian?
A Yes.

Q Well, he was present too when that rope was thrown in your lap?
A Yes.

Q All right. And how about Major Manchester? Was he present too when that rope was thrown in your lap?
A I don't recall.

Q He could have been present but you don't recall?
A Yes.

Q But all these others I have named were present when that rope was thrown in your lap?
A I recall seeing them.

Trial Judge Advocate: No further questions.

Major MacLennan: What was that last question?

Law Member: I recall seeing them.

Trial Judge Advocate: The question was whether all those I named were present at that time, and he says yes, he recalls seeing them. No further questions.

Defense: No further questions.

President: The witness may be excused.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

President: Do you have anything further to offer on this issue?

Defense: Not at this time, if the Court please.

Law Member: Major, I would like to have you state the grounds of your objection on the receipt in evidence of these two exhibits, 35 and 36 for identification.

Defense: Were there two?

Law Member: 35 is the handwritten statement of Prevost and 36 is the purported question and answer statement taken on September 5th. I would like to have you take them up separately.

Defense: The defense is objecting to the introduction of Prosecution Exhibit 35 for identification, in the first place, upon the ground the statement was not voluntarily obtained; secondly, that the witness was not fully and duly apprised of his rights as a witness; thirdly, that the statement contained other facts and circumstances prejudicial to and incriminating to the accused in this case.

Law Member: Now, then, as to the last grounds of your objection, I assume that any names other than the accused, if there are actually other names in there, will be deleted before being furnished to the Court as was done in Exhibit 33 and 34?

Trial Judge Advocate: That is correct, sir.

Defense: It is the position of the defense that in all the exhibits the mere deletion of the names does not remove the prejudicial --

Law Member: I understand that, Major, but in that connection it is understood that before the exhibit is viewed, if it is to be viewed by the Court, the names will be deleted.

Defense: I will not object to the substitution of the photostatic or typewritten copy.

Law Member: As you did in the other exhibits.

Defense: Yes, I will agree to the same stipulation with reference to the other exhibits without in any way waiving any objections I have heretofore made.

Law Member: Now, then, will you state your objection as to Prosecution Exhibit 36 for Identification.

Defense: With respect to Prosecution Exhibit 36, if the Court please, I object to its introduction, first, on the grounds it is not the best evidence; secondly, that it is not a record which contains all happenings which transpired at the time that Prevost was questioned.

Law Member: Any other grounds, Major?

Defense: Well, of course, I have in mind the further ground that there is no showing here that this statement was voluntarily made or that the witness was fully and duly apprised of his rights as a witness in accordance with the provisions of the 24th Article of War.

Law Member: Have you anything to say, Colonel Jaworski, on the objections made by the Defense Counsel?

Trial Judge Advocate: Sir, I don't care to take very long in presenting anything to the Court. I might point out that this last exhibit, Prosecution Exhibit 36, of course, is a matter that was incidental to the original offer, and the main reason it was offered to the Court was for the purpose of letting the Court see what transpired at the time; especially in view of the claim and the charges that the accused Prevost had made. The original offer was made by the prosecution, of course, consists of the written statement. The prosecution feels that this additional statement, Prosecution Exhibit 36 for Identification, is also admissible so that the Court might see what transpired at the time of the interviews that occurred prior to the time the accused gave his statement in his own handwriting. Further than that, if the Court please, I have no comments to make.

Law Member: I have carefully reviewed and weighed all of the evidence pro and con pertaining to the collateral issue of the admissibility of Prosecution Exhibits 35 and 36 for Identification.

This review includes the reading back to me last night by Mr. Stoddard, the court stenographer, of a great deal of the testimony pertaining thereto.

After due deliberation I have reached the conclusion that the writing out in his own handwriting, on September 30, 1944, of Exhibit 35, was a free and voluntary act of the accused Prevost after he had been duly advised of his rights under the 24th Article of War and after he had been told that he did not have to make a statement, and after he had been apprised of the fact that no promises could be made to him in connection therefor, or in consideration therefor, but that, on the other

hand, the said statement could be used against him.

The fact that the said document is in accused's own handwriting and that it was written at a time when he was in a room by himself is rather compelling on this issue of the accused's willingness to make the statement. Accordingly, accused's objection to Prosecution Exhibit 35 for Identification, is overruled and the statement will be received in evidence as Prosecution Exhibit 35.

Now, as to Prosecution Exhibit 36 for Identification, this proposed exhibit purports to be a question and answer statement taken from the accused Prevost on September 5, 1944, twenty-five days before the accused furnished the statement which is now in evidence as Prosecution Exhibit 35.

This document, it should be noted, was not offered in evidence by the Trial Judge Advocate on the main issue of the guilt or innocence of the accused but was offered by him on the collateral issue in support of his contention that Prosecution Exhibit 35 was voluntary.

I feel that on said collateral issue the only material and relevant parts of said proposed Exhibit 36 are as follows:

(1) The first two or three paragraphs thereof pertaining to the 24th Article of War. These two or three paragraphs, however, were read verbatim by the witness Lu Henderson and are, therefore, already in the record and before the Court.

(2) The fact that any further instructions to Prevost, if any in fact were given, as to his rights as a witness and as to his being advised that he did not have to make any statement and/or that any statement he might make could and would be used against him, which some witnesses have testified were given, do not in fact appear transcribed in the proposed exhibit even though the exhibit was offered as a complete transcription of what went on during the questioning of the accused. On this second question there is an abundance of testimony already in the evidence definitely establishing the fact that the exhibit contains no further instructions to the accused either at the beginning of the interview or after an alleged recess other than the aforementioned paragraph pertaining to the 24th Article of War.

As stated before, it is my opinion that these are the only parts of this proposed exhibit that are pertinent to the collateral issue. I assume; and I must assume because I have not seen the proposed exhibit, I assume that the balance of the statement contains either incriminating statements or admissions highly prejudicial to the accused. There has been offered some testimony that certain threats were made to the accused on September 5, that duress was practiced by certain persons, and that acts frowned upon and condemned by the Constitution, the civil courts, and the military courts as well, were practiced upon the accused, as a result of which threats, duress and/or acts the accused was forced to submit to the questioning on the said day, September 5. Concerning this ground urged for the rejection of the proposed exhibit, I feel that the preponderance of the evidence establishes

as a fact, and I so find, that no such threats were made, no such duress was used, and no such improper or illegal acts were committed by any persons in connection with the proposed exhibit. However, I feel that under all of the circumstances insufficient instructions were given to this accused Prevost as to his rights as a witness on September 5, 1944, and I am not satisfied fully that he was warned on said day that any statement that he might make could or would be used against him. I feel that its receipt in evidence at this time, on this collateral issue, would be highly prejudicial and would seriously and substantially affect the substantial rights of the accused. Accordingly, defendant's objection to the prosecution's proposed Exhibit 36 is sustained.

Trial Judge Advocate: Now, this will become Prosecution Exhibit 35 instead of 36 for Identification.

Defense: I haven't looked at the names on this.

Trial Judge Advocate: They have all been cut out.

Defense: You gave me a copy at one time and you took it back.

Trial Judge Advocate: I will give it to you again.

Law Member: Of course, may I state for the record, that Prosecution Exhibit 35 is binding only upon the accused Prevost who made it and is not binding on any of the codefendants.

Defense: With reference to the exhibits, if the Court please, and names that have been deleted, there is the name of one man that has been deleted who is not an accused in this case, and I am asking that that man's name should be reinserted in the exhibit.

Trial Judge Advocate: I have no objection to it. I have some question about the propriety of doing it, since the particular thing is probably hearsay, but I don't see any particular objection to it so I will add it to it.

Law Member: That name is now so added?

Trial Judge Advocate: Yes, so added.

The paper previously marked Prosecution Exhibit 36 for Identification was then marked Prosecution Exhibit 35, received in evidence, and was read to the Court by the Trial Judge Advocate.

Law Member: Does the date appear on the statement?

Trial Judge Advocate: No, sir, but the date does appear under Major Manchester's initials and he testified it was on the 30th of September. Now, if the Court please, in the same manner as was done on the previous statements offered, I wish to withdraw the original and substitute therefor a photostatic copy

that has deleted from it all names except the name of Sergeant Ben Thomas, which Defense Counsel requested be left in there, and there is also attached to the photostatic copy a typewritten copy, which similarly has all names deleted except the name of Sergeant Ben Thomas, which was left in by request of Defense Counsel.

Law Member: And deleted by cutting and not by scratching out?

Trial Judge Advocate: The names on the typewritten copy have been cut out; the names on the photostatic copy have been blacked out and Counsel has tested it and is satisfied with the blackening process.

Defense: That is correct.

President: The Court will take its customary fifteen minute recess now in view of the fact there is no witness before the Court. We will reconvene at 10:30.

The Court thereupon recessed at 10:00 a.m., and reconvened at 10:35 a.m., 1 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

Trial Judge Advocate: Let the record show each of the accused is present, all members of the Court, and that the personnel representing the accused and the personnel for the prosecution are present.

The reporter was also present.

Lt. Colonel Curtis L. Williams, a witness for the prosecution, again took the witness stand and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You are reminded you are still under oath.

A Yes, sir.

Q Colonel, in connection with your investigation of the matter you testified to the Court about yesterday, did you or not have occasion to interview the accused Samuel Snow?

A I did.

Q Do you recall about when that was?

A Well, it was the later part of September.

Q Of this year?

A Of 1944.

Q Yes, sir. Now, do you recall who was present at the time you interviewed the accused Samuel Snow?

A I believe that in the room part of the time was Captain Tyson -- however, he went in and out, as I remember it -- but I think you were there part of the time, and myself, and the reporter.

Q Now, prior to the time that you interviewed the accused Samuel Snow did you or not state anything to him with respect to his rights as a witness?

A Yes.

Q What, if anything, did you say to him at that time?

A Previous to questioning Snow, I informed -- I asked him if he understood his rights under the 24th Article of War.

Q All right. What happened then?

A And if he said he did, I then -- I mean, if he said he did, we didn't explain the article of war to him; if he said he didn't, it was read and explained to him. Just the same procedure as in every other witness we examined in this investigation.

Q All right. Now, after that interview, Colonel Williams, was completed, state whether or not anything further transpired with respect to the accused Samuel Snow.

A Yes. Upon the completion of my part of the investigation, as far as the record which I was making for the Chief of Transportation was concerned, I then asked Snow if he cared to put in writing the statement which he had previously made to me.

Q And what, if anything, did the accused Samuel Snow say to that?

A He said that he did and would put in writing that statement.

Q Well, what, if anything, did the accused Samuel Snow do then?

A Well, I believe that, as I remember it, Snow, after I had warned him if he did put the statement in writing it would be used against him, Snow then left the room where I had been questioning him and went into an adjacent room which was just back of that room, and after furnishing paper and pencil, he began to write. I did not stay there while he continued to write but went ahead with the examination of other witnesses.

Q Now, prior to the time that he went into that room you say you warned him of his rights. Now, will you state to the Court just what you did say to him, and I am speaking now of the time when he said that he was willing to write his statement and prior to the time that he actually began writing it. Will you tell the Court now just what you did say?

A As I did in all other cases concerning an additional --

Defense: Just a moment, if the Court please. I am going to object. The witness here was asked a specific question and he goes into an answer of what he does in all cases, which I don't think is material and certainly is unresponsive. I think what we are concerned with now is what was done with reference to Snow. What he may have done in other cases is absolutely immaterial.

Law Member: Colonel, confine him for the present to the Snow incident which you asked him about.

Trial Judge Advocate: All right, sir, I will confine him to Snow. I have a feeling Counsel will go into the others anyway.

Q Colonel Williams for the time being suppose you confine yourself to what was done at the time you talked with the accused Snow?

A I told Private Snow that if he cared to make the statement in writing which he had previously made to me that I would take it, and that if he made such statements, however, he must be aware that it could be used against him in a trial which was later to be held.

Q All right. Did he thereupon make a statement in his own handwriting?

A He did.

Q Was that statement or not delivered to anyone?

A It was.

Q Were you present at the time of its delivery?

A Yes, sir.

Q Where did that delivery occur?

A In the room in, I believe it is called, the -- well, in the building where Major Manchester's office is located. I think it is called the -- I can't think of the building; but in the room adjacent to where we had normally questioned the witnesses.

Q Isn't it the Goodrich Building?

A Goodrich Building, that's right.

Q All right, now. The room that Samuel Snow used when writing the statement was located where with respect to the room in which the interview occurred?

A As I said, adjacent to it, a wall being the only partition. You go out of the door which goes into the room where the witnesses were interviewed, and take about two steps to the right and enter the other door that enters the room where Private Snow did write the confession in his own handwriting.

Q Was that wall a solid partition?

A It was.

Q Now, what, if anything, transpired at the time that Samuel Snow delivered this instrument that you have referred to that was prepared by him in his own handwriting?

A At the time that he completed the writing I left the room that I was in, where I had been questioning other witnesses, and went into the adjacent room where Snow was located and he had completed the writing of it. Present in that room, as I recall now, was Colonel Jaworski and myself, and a little later just before Snow signed it Major Manchester came in, and I don't know why he came into the room other than what I heard, which I can't testify to, of course, but he did come in later before Snow signed the statement, and when we were all in the room before Snow wrote his name to the document he was again asked by Major Manchester if he made that statement willingly and knowing that if he made it it could be used against him in a court, and if he still wanted to sign it.

Q And what, if anything, did the accused Samuel Snow say to that?

A He said he would sign it; that he recognized his rights.

Q Did he thereupon sign it?

A He did.

Q Was it or not delivered?

A It was delivered.

Q I will ask you to take a look at this statement, which I will ask the reporter to mark Prosecution Exhibit 37 for identification, and tell me, please, sir, if that is the statement that Samuel Snow delivered at the time.

A That is the statement.

Defense: I have read it, Counsel.

Trial Judge Advocate: You have read it?

Defense: Yes, sir.

Q Colonel Williams, do you recall anything about the interview with the accused Samuel Snow that impressed you particularly?

A Yes.

Q What was it?

A I think Snow was the most loquacious witness and would most readily answer the questions asked of any witness I interviewed during this case; and the situation which he found himself in indicates was to him, and as explained by him to us, amusing. That impressed upon me -- his readiness to answer those questions made me remember Snow quite well.

Trial Judge Advocate: If the Court please, I offer this Prosecution Exhibit 37 for identification in evidence with the understanding that it is offered only against the accused Samuel

Snow, although I believe that I can say to the Court there is no name mentioned in this particular statement that relates to any other accused. However, it is offered for the limited purpose of a statement against the accused Samuel Snow only.

Law Member: You say there are names in it?

Trial Judge Advocate: There are names but not of any accused, sir.

Defense: The defense will have the same rights before the Court rules on the exhibit?

Law Member: Yes. You have a right now on this issue to cross-examine Colonel Williams and to produce any other evidence which you may have, including the testimony of the accused Snow pertaining to this issue, and if you wish time to confer with the accused Snow, you may.

Defense: Yes, thank you.

CROSS-EXAMINATION

Questions by Defense:

Q Colonel, you have a distinct recollection of all the matters you have testified to with respect to the accused Snow without having in any way refreshed your recollection?

A Yes, I do.

Q You haven't referred to anything before you came here to testify this morning for the purpose of refreshing your recollection of the incidents that took place that day?

A I have not.

Q You do have notes, as I understand it, with reference to each of these accused?

A Some notes to each of them, yes.

Q Yes. Now I wish you would tell the Court just exactly as you can best recall what was said to the accused Snow by yourself at the outset of your interview with him with respect to his rights under the 24th Article of War or otherwise.

A To Private Snow, before I started questioning him, I asked him did he understand his rights as a witness under the 24th Article of War. Then I read and explained the Article of War; that no witness before a military court or tribunal --

Q Now, just a moment, Colonel.

Law Member: Isn't this part of the explanation, Major?

Q Well, all right, go ahead.

A Yes, this is part of the explanation. -- (continuing) that no witness before a military court or tribunal, before an officer

taking a deposition, before any officer, shall be compelled to answer any questions, the answer to which might tend to incriminate, or to answer any question which is not material to the issue, or to answer any question which might incriminate him or be incriminating to him, and read that, as I keep a copy before me, and then if he didn't understand explain it further to him.

Q But didn't you state on direct examination that you didn't recall whether or not you made that explanation or not?

A I don't believe I made that statement.

Q I understood you to say, Colonel, -- I may be wrong -- that you first asked him if he understood his rights, and if Snow answered yes, you went right ahead; but that if Snow answered no, you explained those rights to him.

A That is exactly right.

Q Now, which happened there? Did Snow answer yes or did Snow answer no.

A No, I won't say that.

Q You couldn't say that?

A No. If he said yes, I didn't explain it to him; if he said no, I did read and explain it to him, and then at the completion of that I would ask him the further question, now, do you understand your rights as a witness under the 24th Article of war.

Q But you don't definitely recall whether you did that at this time with reference to Snow?

A No, I won't say that I did.

Q That's right. Now, did you ask Snow anything with respect to what education he had had?

A I might have asked that, I won't state definitely, because I wouldn't -- some of the witnesses I did ask them that and some I did not.

Q You don't recall?

A I don't recall.

Q But you did make an explanation of his rights to him, Colonel; you did explain it in the manner you just recited to the Court? You understand me?

A Yes, I think I do. In other words, if in answering the question which I put to him, do you now understand your rights, and he said no, did I go further, you mean?

Q Yes. Then you went ahead and made the explanation you have just told the Court about?

A No, you misunderstand me. When I first asked him the question, do you understand your rights under the 24th Article of War, then I would read to him the 24th if he said no.

Q I see. Now you went ahead then with Snow and completed certain questioning that you had?

A Yes.

Q That you were interested in with respect to your Inspector General's office?

A Yes.

Q And then at the end of that questioning you asked Snow something about whether or not he wanted to make a written statement?

A When I had completed my record I did ask him that.

Q And just specifically what was it you said to him?

A I asked Snow if he cared to put in writing the statement which he had previously given to me for our record.

Law Member: Did you say "our record"? The record of the War Department, you mean?

The Witness: That's right.

Q The Inspector General's record?

A Yes, sir.

Q And is that all of the conversation?

A Well, that is all at that time, other than the further warning which I gave to him.

Q Now, you gave a further warning to him at that time?

A Yes.

Q Did Colonel Jaworski give him any warning at that time to your knowledge?

A To my knowledge I don't believe that Colonel Jaworski did give him any warning at that time.

Q Well, what were the specific words that you used with respect to further warning Snow. Can you recall the specific words?

A Yes, I think I can.

Q All right.

A You want me to?

Q Yes, we would like to have you give them.

A I informed Snow that if he would care to make the statement in writing which he had previously made to me for our record, that we would take the statement and that he must be aware that if he did make it that it could be used against him in any court.

Q You recall those were the specific words that you used?

A Yes.

Q By the way, did Captain Tyson interrogate Snow?

A No.

Q Did Colonel Jaworski?

A Not in my presence, no.

Q Now --

A You mean -- may I change that just a minute. Not in my presence in that room while I had been questioning him for the Inspector General.

Q I meant, Colonel, to your knowledge, of course.

A Colonel Jaworski did question him later on in the other room.

Q But not during the course of your examination?

A No.

Q Now, what other accused did you interview wherein this same procedure was followed and a written statement was made?

A Snow --

Q We are talking about Snow.

A In addition to Snow, you mean?

Q Yes.

A Snow, Prevost, and -- oh, I think there were some, a few more. I am not sure just which ones they were. There was a few more than that.

Q You have no independent recollection of any others?

A Oh, yes. You mean other than those I have named?

Q Yes.

A Yes, I think perhaps there would be one or two more I would remember.

Q Who were they?

A I believe Montgomery was one who made a statement to me. That is Roy L. Montgomery.

Q Yes. You testified about him the other day.

A Yes, I did. That is all I recall right now. However, I do know there was others.

Q The only ones you could recall now or you have any recollection of giving statements to you are Snow, Prevost and Montgomery?

A Yes, the ones I recall their names, yes.

Q The only ones you recall their names.

A Yes, but I know there are others.

Q You know there are others but you can't recall them at this time?

A I think I could after thinking it over.

Q Well, would you do that; would you think it over?

A No, I won't say that I can right now.

Q You won't say you can right now?

A I will give them to you later on if I recall them.

Q There has been testimony before the Court -- you testified with

respect to Prevost and Montgomery?

A That's right, I testified to them.

Q As I understand you to say, after you asked Prevost if he desired to reduce what he had told you to writing and you further warned him of his rights, he went into another room?

Law Member: Do you mean Prevost?

Q I am sorry; I mean Snow.

A Yes.

Q And he went into another room and wrote?

A Yes, that's right.

Q And you don't know of your own knowledge what transpired in the other room?

A No. I mean what transpired while he was writing.

Q That's right. Did you while Prevost -- Snow, I meant to say -- while Snow was in that other room, did you ever go into the room?

A Yes.

Q You went into the room?

A Yes.

Q What stage of the proceeding was that?

A At the completion of his writing.

Q At the completion of his writing?

A Yes.

Q And who was there at that time?

A As I stated, Colonel Jaworski was there, and Snow and myself, and Major Manchester came in after I had arrived there, I believe. He was in the room while I was in there with the aforementioned persons.

Q Did you have any further conversation with Snow?

A No, I had no further conversation with Snow.

Q Did Major Manchester have any further conversation with Snow?

A Yes, he did.

Q And what was the conversation that Major Manchester had?

A Before Snow had finished, had signed his name to the writing, Major Manchester asked Snow if this was his writing, and that if he made the statement willingly and if he knew that if he signed it that it could be used against him.

Q Major Manchester?

A Major Manchester asked him that, yes.

Q Do you recall Snow's various replies to these questions?

A He understood them, yes.

Q Well, I am not asking you that, Colonel I asked you if you recall what his answers were?

A As I recall, he said yes.

Q He continued to say yes?

A He said yes, he understood it.

Q And he was asked the first question and he would say yes, and then ask him another question and he would say yes, and ask him further questions and he would say yes.

A The only question was asked him, was that his writing, and he said yes, because he held it before him. The next question was, do you understand if you sign this, turn it over to us, it can be used against you, and he said yes, he understood it.

Q That is Major Manchester?

A That is Major Manchester talking.

Q Go on; tell us any other conversation.

A That is all the conversation I recall right now between Snow and Manchester.

Q Was any explanation given to Snow that Court-Martial charges were contemplated against him?

A No, I don't think there was anything said about that. Just asked him if he understood.

Q Did anybody else have a conversation with Snow with respect to this statement besides Major Manchester?

A Yes.

Q Who?

A Colonel Jaworski.

Q And what did Colonel Jaworski say?

A Colonel Jaworski before taking the statement informed him again that if he turned the statement over to him that it could be used against him in a Court-Martial trial, which would inevitably come.

Q Did you before interviewing these men, taking any of their statements, make any inquiry as to their Army classification, test score, anything of that kind?

A No, I never did that.

Q Well, Snow was an extremely illiterate man, wasn't he?

A I don't think he is any more illiterate than any other witness.

Q Well, you take a look at his statement again and see if that isn't a statement of an extremely illiterate and uneducated individual.

Law Member: Don't read any of it out loud, Colonel.

The Witness: No.

A I am familiar with the statement.

Q After you looked at it, what is your answer?

A I think I know colored soldiers fairly well --

Defense: If the Court please, I would like an answer to my question. If he wants to make an explanation, he may do so.

Law Member: You have asked him a question whether or not he was illiterate, and I believe he is going to make an answer.

Q All right; go ahead.

A As I say, I think I know colored soldiers fairly well, inasmuch as I have served with them, and the majority of them are unfortunately as far as their school education is concerned may be not quite as high as that of white soldiers, but what I would call their common sense is good, and I think that Snow's common sense is good. I think that Snow in making this statement was aware as much as any other witnesses in this case of its importance and of his implication in it. He made no -- there was no hesitancy on his part to give it in detail and in full, although his participation was perhaps rather snort.

Q Would you be good enough to answer my question?

A I feel I have answered the Counsel's question; that Snow is the average colored soldier.

Q As a matter of fact, I think you think he is a little better, wouldn't you, from the description you have just made?

A I would be willing to take Snow if he was a soldier. He is the kind of a lad that would make a good soldier.

Q You think he is a pretty good boy?

A He is a good soldier.

Q And that his intelligence is very ably demonstrated in the type of statement that he wrote here too, isn't it?

A His intelligence is demonstrated by the statement he wrote. Now, the degree of his intelligence by the statement that he wrote, his spelling and so forth, may not be perfect -- it isn't -- and he spells rather poorly. As I said, many colored soldiers spell very poorly; many white soldiers too.

Q Now, did Colonel Jaworski before he talked to him, did he point out to him very carefully and clearly what action might be contemplated against him in this particular case; what might be done with him?

A Colonel Jaworski pointed out clearly in this manner. He informed him that if the statement that he had written was signed and turned over to him, Jaworski, that it could be used against him in court, which to me is --

Q Well, I don't care what it was to you.

A -- (continuing) and that Snow, he understood it.

Q Did Colonel Jaworski inform Snow who he was; what part he was playing there; what his purpose was in being there?

A I don't believe he did.

Defense: That is all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Colonel Williams, was there anything said by the accused Snow at any time that indicated in the least that he wasn't very alert to every question that was asked him?

A On the contrary, he was very alert.

Q Do you remember anything about his mannerisms and his presence while he was being interviewed?

A I do.

Q What was that?

A Snow was laughing, rather amused, and explained in detail the part that he took and related to us that unfortunately he didn't get to participate very long; he would have liked to have participated longer but he was hit before he got very far along in the fight.

Law Member: Just a minute. I don't see where the last testimony of Colonel Williams has any bearing on the issue as to the admissibility of this statement.

Trial Judge Advocate: I agree to the latter part being stricken, sir.

Law Member: I hold it is heresay and the last answer will be stricken out.

Defense: Well, I think the statement, if the Court please, was certainly willful on the part of the witness. The witness knows it was improper, extremely prejudicial, and it is a remark I don't think can be removed from the minds of the members of this Court by simply striking it out.

Law Member: It can be removed. But, Major, you didn't object to it; I am the one on my own motion who is striking that answer out.

Defense: Well, I have attempted, if it please the Court, to stop this witness several times when he goes into long lengthy speeches in answering a question which can be answered yes or no or by a short phrase, and the Court continually rules against me in attempting to do that.

Law Member: I don't think I have continually ruled against

you. But that last answer of this witness goes out on my motion.

Trial Judge Advocate: Oh, course, you are instructing the members of the Court not to pay any attention to it.

Law Member: Definitely. The members of the Court have been instructed generally they will pay no attention to anything stricken from the record by me, and I again warn them as to the last answer of this witness.

Trial Judge Advocate: Now, that part of the answer as to his having laughed and joked, of course, that remains in; nothing harmful about it.

Law Member: That is the only part that does remain in because that pertains to whether or not that action of Snow was voluntary; the balance goes out.

Defense: I will ask the Court at this time to admonish this witness, as to further questions, he is to confine his answer as nearly as possible to answering the question.

Law Member: I so admonish the witness. He will answer the questions only.

The Witness: Yes, sir.

Trial Judge Advocate: If the Court please, I don't think there should be the least implication, as Counsel is trying to leave here; the witness did willfully or willingly make any statements. It may be my question that brought it out; but I was trying to get before the Court his presence and his mannerisms, and certainly I don't feel there is any inference warranted that there was anything willful or deliberate about that phase of it.

Law Member: I believe I have so stated that to the record.

Trial Judge Advocate: All right, sir.

Q Now, Colonel Williams, was there at any time anything said to the accused Snow that related to holding out to him any hope of reward, gain or benefit if he made a statement?

A There was none made to him.

Q Was there in any respect or in any manner any character of threat exercised in talking with Snow by anyone who was present?

A Not in my presence.

Defense: I think all these questions, if the Court please, especially the last two, call for conclusions on the part of the witness. That is a matter that the Court must determine from what was said there. In other words, the witness is now filling the Court's prerogative. The witness must testify to the facts and then the Court must determine whether or not any threats were

made, any duress or any benefits held forth. It is the facts; it is what the witnesses say are the factual matters that are to be brought before this Court from the witness chair, and what the effect of those factual matters is is a matter for the Court to determine.

Law Member: As to whether or not they are threats?

Defense: That's right.

Trial Judge Advocate: There is no other way of asking a witness that unfortunately.

Defense: You can ask him what transpired there that day and the Court determines from that. I move to strike the last two answers as being mere conclusions on the part of the witness.

Law Member: I will strike them and direct the Court not to pay any attention to them.

Trial Judge Advocate: All right. If it please the Court, I renew my offer of Prosecution Exhibit 37. It is now being offered and I offer it as a confession.

Law Member: Major, have you any evidence?

Defense: Yes, In view of Counsel's redirect I desire to question the witness further.

Law Member: All right, go ahead.

RECROSS-EXAMINATION

Questions by Defense:

Q Now, Colonel, are you able to tell me at this time the names of the accused other than Montgomery, Prevost and Snow whom you interviewed and questioned?

A No, I am not able.

Q Do you have any records to which you can refer and give me that information?

A I would have to refer to the original report.

Q Well, I don't care what you have to refer to. Do you have anything in your possession out here to which you could refer and tell me the names of the individuals whom you interviewed?

A I do not.

Law Member: That question, Major, was "out here"; is that the way I understood that question?

Defense: I asked him here; within the immediate vicinity of the Court.

Q You don't have anything?

A As I said, not unless I have access to the original report.

Defense: If the Court please, I am going to ask that this witness be instructed to refresh his recollection from the original report. I desire in view of Counsel's examination about mannerisms expressed by, manifested by a witness, I desire to go into these matters rather fully and extendedly, and I am asking the Court to ask the witness to refresh his recollection from the original record as to the men he interviewed.

Trial Judge Advocate: As to the mannerisms?

Law Member: I don't see how mannerisms would appear in the record.

Defense: They won't. I want the witness' recollection on mannerisms, but I want him to refresh his recollection as to the men he has interviewed.

Law Member: Secondly, if I may continue, it seems to me that the testimony which you wish to rebutt or question him about was stricken out of the record by me.

Defense: No, I think Counsel asked to have certain portions remain there about the witness being voluntary and smiling -- I have forgotten just exactly what it was -- and the Court permitted that to remain.

Law Member: The fact that he smiled. Is that going to be produced in any record produced by this witness?

Defense: I didn't give all the testimony, I can't remember all of it, but there was testimony in there as to certain things this accused Snow did, mannerisms and other things, which causes him particularly to remember this witness.

Law Member: That is extraneous as to any record which he might produce, isn't it, Major?

Defense: I am only asking him to look at the record, if the Court please, in order that he can tell me the names of the men whom he interviewed.

Law Member: As I understand it, Major, and please correct me if I am wrong, this witness has testified that he did not refresh his recollection from any document. If he did refresh his recollection from any document, the law is definite that he would have to produce that document.

Defense: That's right, sir. I understand that.

Law Member: But -- I may be mistaken -- it seems to me the Colonel Williams stated in order to testify to Snow he didn't have to refresh his recollection.

Defense: I think that's right, if the Court please, I think that is entirely right, but the witness has also stated that by refreshing his recollection he would be able to remember the names of the other accused he has talked to, and that is what I am asking him how to do.

Law Member: Is that the only reason you want this record, now in the hands of some General, produced here?

Defense: I don't want the record produced here; I just want the witness to look at it and refresh his recollection.

Law Member: Now, may I ask a question. Colonel, in order to comply with the request of the Defense Counsel must you see that original record or have you some notes which you made yourself during the course of your investigation from which you can refresh your recollection?

The Witness: It would be necessary that I see the original report.

Defense: May I ask a further question, if the Court please?

Law Member: Yes.

Q You do have some notes?

A Yes, I testified I had some notes.

Q Yes, you had some notes.

A I didn't say I had no notes as to Snow. The other day, as to Montgomery, I said as to Montgomery I believe I had some notes.

Q Well, you have notes with respect to the men whom you have questioned in this case?

A Not in all cases.

Q Well, do you recall about how many men you have notes with respect to?

A No, I don't recall the number.

Q Are those notes you made at the time that you questioned the men or notes you subsequently made from reading the record?

A Those are notes I would just make as I questioned the man. Keep a pad before me and make any such note as came to my mind at that time, at the time of the questioning.

Law Member: Major, I want you to understand I wish to comply with your request if it is reasonably necessary. My understanding is investigations made for the War Department, through the Inspector General, are highly classified and some procedure or some action must be taken by the President of the Court, acting for the Court, in order to comply with your request.

Defense: Well, I thought the witness stated in here the other day that he had access to that but hadn't been called upon

to look at it since he had been here.

Law Member: I don't think there is any doubt but what Colonel Williams has access, but that doesn't give the Court or Trial Judge Advocate or Defense Counsel access to it.

Defense: I am not asking for access to it at this time -- I may at a later time; I don't know -- but I am asking now only that the witness go over that record for the purpose of refreshing his recollection as to the various accused here that he interviewed so that I may then examine him with respect to some of those examinations.

Law Member: Colonel, is that down at the Port of Embarkation?

The Witness: The report?

Law Member: Yes.

The Witness: As I testified the other day, on my recommendation on completing writing the report, I recommended two copies of the record be sent to the Port of Embarkation. However, we must also be aware of the regulation which makes the report of the Inspector General confidential and only the directing authority can allow anyone other than those in the case, connected with the case, to have access to it.

Defense: I understand that. I am not going to ask him about anything in the report. If I do, I will take it up through proper channels before I ask anything in the report to be disclosed. I am only asking that the witness, who is entitled to see the report, look at it himself for the purpose of refreshing his recollection as to the individuals whom he interviewed in this case.

Law Member: Will you ask the witness if there is any other way other than referring to that report that he can refresh his recollection from, and I would like to ask you if you would let me ask leading question of the witness to refresh his recollection.

Defense: With respect to this matter?

Law Member: As to who he took statements from.

Defense: Yes, I haven't any objection to the Court doing so.

Law Member: Has the Trial Judge Advocate any objection?

Trial Judge Advocate: No, you can just ask any questions that occur to you of this witness. I am perfectly willing for the sky to be the limit.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Did you question at any time during this investigation the accused Basden?

A Yes, sir.

Q Did you at any time during this investigation question Wooden?

A Yes, sir.

Q Now, after those two definitely leading questions for the purpose of refreshing your recollection, Colonel, are there any other accused that you now can think of from whom you took question and answer statements?

A May I clear myself up before answering the question. I believe Major Beeks didn't ask me about the witnesses I questioned but the witnesses I took written statements from. Yes, I questioned 164 witnesses in this case and I can look here at this group of men and I think I can pick out almost all of them that I questioned; but he asked about the written statements that I took from the men, if I am correct.

Defense: I think I asked you both questions, Colonel, to be fair.

Q Well, then let me break it down a little. I understand you questioned all of the accused?

A No, sir. Those men that came back from overseas I did not.

Q That was one particular group?

A. Two groups.

Q Approximately how many was that?

A That came back?

Q In the two groups.

A I think in the first group there were nine and in the second group, I believe, there was --

Trial Judge Advocate: About fifteen.

A -- (continuing) Fifteen - sixteen, something like that. As I remember, close to twenty-five in all.

Q Did you question all of those accused other than those that came back from overseas?

A Yes, sir.

Q Now, can you give me your best recollection as to how many statements were taken by you or by Colonel Jaworski, or by Major Manchester, which were put in writing?

A Put in their own writing?

Q Yes.

A I would estimate seven.

Q And you have mentioned Montgomery, is that correct?

A Yes, sir.

Q You have mentioned Prevost?

A Yes, sir.

Q You have mentioned Snow?

A Yes, sir.

Q Basden?

A No, sir, I did not mention Basden as making a written statement. You asked me, sir, did I question Basden.

Q I beg your pardon. Wooden; did he make a written statement.

A No, sir, Wooden did not make a written statement to me, sir.

Q As I understand it, Colonel, this report from which you have been asked to refresh your recollection, each question and answer statement ends with a question, which in words or substance is, "Have you anything else which you wish to say pertaining to the investigation now at hand?" is that correct?

A It runs something like this. Have you any other information or anything to add other than the questions that I have asked you.

Q Now, is that the last sentence in each one of the question and answer statements which appear in your record?

A No, sir, that may not be. That is just the usual form that we ask, and more than likely most endings of most questioning will end that way.

Q But there might be some reference in your investigation pertaining to the subsequent writing out of a statement in his own handwriting of some accused?

A No, sir, there may be none, sir.

Q Then you can't refresh your recollection as to that from anything that is in the report that you sent to the War Department?

A Not to the writing -- not to the written statement, no, sir. That is not a part of our report.

Law Member: That is all. Now, Major, I want to satisfy you --

Defense: It is pretty hard to do that, sir.

Law Member: I think I will concede that. You have asked this witness to look at some record, which is a report to the War Department, so that the witness may refresh his recollection as to the particular accused from whom he took a statement.

Defense: That's right, sir.

Law Member: Don't you think his last answer makes your request sort of unnecessary.

Defense: Well, I don't think it does, if the Court please. I said before, or I asked him what he would have to do, and he said, I would have to look at the record; so I don't know.

RECROSS EXAMINATION

Q Colonel, by looking back at the record you made at the time, recalling the facts and circumstances to your mind, would you then be able to tell from which witnesses you secured written statements?

A By looking at my written record?

Q Yes, by looking back at your written record and refreshing your recollection as to testimony given and what transpired.

A No, I am sure I wouldn't be able to definitely determine.

Q All right. You are not able to recall this morning anybody from whom a written statement was taken other than Prevost, Montgomery and Snow?

A No, I don't.

Q Well, let's go through the names of the accused.

Law Member: Let's make it a little shorter. Why don't you show the witness a list of the accused and state for the record that is what you are doing instead of asking the same question as to each accused.

Defense: All right, I will do that, sir.

Q Colonel, I am going to hand you the specification to Charge I in this case, which lists names of all the accused in this case. I wish you would go through that and give us the names, first, of those accused whom you have interviewed, and also tell us at the same time if a written statement was obtained from that particular accused. You understand what it is I want?

A Yes, sir.

Q All right.

A The answer to that question, the only other man whose name appears on that list that I received a written statement from is Jones.

Q Jones.

A Now, there are some men who were not accused but who have --

Law Member: That is all right. That is from the list that was handed you?

The Witness: Yes, sir.

Q But there are quite a lot of men on this list whom you interviewed, aren't they?

A Yes, sir.

Q I wanted you also to give me the names of those you interviewed.

A Oh, I am sorry. I interviewed Basden; I interviewed Bratton,

Ceaser, Green, Hamilton, I believe Walter Jackson, William G. Jones, Henry Jupiter, Willie Prevost, Snow, and I believe Private Elva Shelton. I am not sure about Spencer, but --

Q Which Spencer is that?

A Nathaniel T. -- (continuing) Sutliff. That is Richard L. Sutliff. I am pretty sure Arthur Williams, Pfc. Arthur Williams; I interviewed him. Wallace Wooden; Brown.

Q Which Brown is that?

A That is John R., Private John R. Brown.

Q He is not an accused here anymore?

A That is not pointed out in the record here, sir.

Q No, that's right.

A I am not sure about Curry, but I believe that I did talk to Curry. Herman Johnson; Roy Montgomery; and then down in the lower list there, William G. Jones.

Q Now on these men that you have listed, Colonel, tell us which ones that there were some particular mannerisms or something that particularly impressed you with what took place there that day so that you can remember those better than others.

A Before I go into answering that question --

Q Just answer it.

A What ones, you mean, particularly did?

Q Yes.

A Basden, Snow, Herman Johnson, Richard Sutliff, Prevost, Jefferson D. Green, Hamilton, Jones -- William G. Jones -- Wallace Wooden. Those particularly.

Q. Yes. Then there were --

A Ceaser too.

Q There were exceptional and outstanding circumstances with nearly every man you interviewed, weren't there?

A Not especially, but something about them that I remember. Either facial expression, answering of questions, or activities which I observed.

Q And caused you to remember all of these men just in the same manner that you recall Snow being examined?

A Not in the same manner, no. Snow, I remember quite well.

Q Quite well?

A Yes.

Q But there was sufficient that was exceptional with respect to the other men that you have a recollection about those over the general run of the 165 that you interviewed?

A That I recall now, yes, sir.

Q Still you weren't able to recall those without looking at a list, were you?

A I wish that the Court would read back the record and see what Counsel asked me concerning his first question on the individual which I -- whether his statement says I took statements from them in writing or testimony from them.

Q I think the record speaks for itself.

Trial Judge Advocate: And I think it speaks just as the witness puts it.

Defense: Have it read back and see.

Trial Judge Advocate: All right; let's see if it does.

Law Member: Do you recall, Major, what it was; remember where it was in the testimony?

The Witness: To the best of my recollection, Colonel, it was this. He asked me to name the individuals for whom I took written statements from --

Defense: I did ask that.

The Witness: -- (continuing) other than those three which I had already identified.

Defense: That's right; I did ask him that, but I also asked him with respect to the men he interviewed.

Trial Judge Advocate: Just the three men he interviewed. No, I don't recall the other.

President: It is pretty close to the start of the cross-examination, I think.

Trial Judge Advocate: Is it material actually?

Defense: I don't think it is particularly material. It is in there; it is in the record. You insisted and made a little speech for the record that was your recollection of it. Now, if that is what you are trying to convey to the Court, I would just as soon have it read back. I don't care.

(Testimony read by reporter as requested.)

Law Member: Will you ask the question you want answered now?

-Defense: I am satisfied. I haven't any further questions of this witness.

Trial Judge Advocate: I have one question, if it please the Court.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Colonel Williams, do you remember about when you left here?

A On Friday night, September -- I mean, Friday night, October 5th or 6th. Somewhere along in there. On a Friday night; I remember that definitely.

Q Do you have or not any way of knowing what written statements I might have taken from any of these accused?

A I do not.

Trial Judge Advocate: That is all.

Defense: No further questions.

President: Any questions by the Court? If not, the witness may be excused.

There being no further questions, the witness was excused and withdrew.

Law Member: Now, Major, on this collateral issue as to the admissibility of the Snow statement, have you any evidence to offer, which might include the testimony of the accused Snow, solely on this issue?

Defense: Were you through?

Trial Judge Advocate: Yes.

Defense: I would like the opportunity, if the Court please, of conferring with Snow.

President: The Court will recess now and reconvene at 1:30. Accused Snow will be left here under proper guard with the Defense Counsel, to be taken back to the guard house when the Defense Counsel is through with him. The Court will recess at this time.

The Court thereupon recessed at 11:45 a.m. and reconvened at 1:30 p.m., 1 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the defense ready?

Defense: Defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show that each of the accused is present, and all members of the Court are present, and

the personnel representing the accused and the personnel representing the prosecution are present.

Defense: If the Court please, accused Snow desires to take the witness stand, and I think it is understood if he does it is for the same limited purpose that the previous accused has taken the witness stand.

Law Member: That is correct, Major.

Defense: Private Snow, will you come forward.

Law Member: Private Snow, as a witness before a military court such as this you have certain specified rights. One thing which you can do is to be sworn as a witness and testify under oath the same way as any other witness testifies. If you do that you are subject to cross-examination by the Trial Judge Advocate and by members of the Court.

Trial Judge Advocate: May I be excused, sir. Washington is calling me long distance. It will be for just a few moments.

President: The Court will take a short recess.

Trial Judge Advocate then left the court room at 1:35 p.m. and returned at 1:40 p.m.

President: The Court will come to order.

Trial Judge Advocate: Let the record show none of the accused or members of the Court left the court room, and the personnel representing the accused are present and the personnel representing the prosecution are present.

Law Member: Now before that interruption, Snow, did you understand what I said. That you can be sworn as a witness, take an oath that you will tell the truth, the whole truth and nothing but the truth. In such event, if you do that, you are subject to cross-examination by the Trial Judge Advocate and by the individual members of the Court. There is another thing which you have the right to do. You can make an unsworn statement which will be read by you or by your counsel. In such event you are not subject to cross-examination by anyone. It is not strictly evidence but the members of the Court will give consideration that unsworn statement which the Court thinks it is entitled to. And, lastly, you have the right to remain absolutely silent, making neither a sworn or an unsworn statement, and the fact that you do remain silent cannot be used against you. Now, in the instant case, at this time an issue has arisen pertaining to the admissibility of an alleged statement signed by you. You have the right to be sworn as a witness and testify solely on matters pertaining to that statement and on nothing else. Now, is there anything I have said to you now which you do not fully understand?

Private Snow: No, sir.

Law Member: And have you talked it over with your counsel?

Private Snow: Yes, sir.

Law Member: And do you elect to be sworn as a witness solely on the question of this collateral issue?

Private Snow: Yes, sir.

Law Member: All right.

Private Samuel Snow, 650th Port Company, a witness for the defense, was sworn and testified, as follows:

Trial Judge Advocate: State your name.

The Witness: Private Samuel Snow.

Trial Judge Advocate: And your organization.

The Witness: 650th Port Company.

Trial Judge Advocate: And you are stationed at Fort Lawton?

The Witness: That's right, yes, sir.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Question by Defense:

Q Snow, were you ever at any time since August 14th of this year taken down to the Seattle Port of Embarkation for questioning?

A Yes, sir, I was.

Q Do you recall approximately the first time?

A Approximately the first time that I was taken down to the Seattle Port of Embarkation for questions was around about the 11th of September, I think it was.

Q About the 11th of September. Were you taken down more than the one time?

A No, sir.

Q Did you understand my question? Were you taken down to the Port for questioning more than one time?

A Yes, sir.

Q About how many times altogether?

A About five times, sir.

Q About five times altogether?

A Yes, sir.

Q Now, during the first time that you were down there for questioning do you recall who was present?

A Yes, sir?

Q The commencement of the period during which you were questioned is what I am speaking of.

A Yes, sir.

Q Who all was present at that time?

A Major Manchester, Sergeant Young and Sergeant Fiske, and two stenographers, and three civilians.

Q Now, tell the Court whether or not the group that you have named were in there continuously.

A No, sir, one of the fellows was not in there continuously and Major Manchester was not in there continuously.

Q He was not in there continuously?

A No, sir.

Q During that period tell the Court whether or not you were ever threatened?

A Yes, sir, I were. Sergeant Young, he threatened me by pulling off his coat and telling me he had a good mind to sock me if I didn't tell the truth and tell what went on down in that Italian area.

Q Who was that who did that, again?

A Sergeant Young.

Q Now, was there a Mr. Freeman present?

A Yes, sir.

Q Tell the Court about any conversation that you had with Mr. Freeman during which you believe that you may have been threatened.

A Mr. Freeman; he set on one end of the table and I was sitting on the opposite end, and he told me to look him right dead in the eyes and then he began to make some remarks, saying that he knew I didn't go to the hospital until 3:00 in the morning and that he was going to lay the murder rap on me of killing the Italian. He also stated, asked me, where my father and mother lived and asked me if I had a sweetheart, and I said yes, sir, and he stated if I didn't tell him the truth I would be a four year loser and I would never see my mother and father again.

Q And during that particular period you have just told us about was there any officer present?

A No, sir.

Q Were there any stenographers present taking that down?

A No, sir.

Q Was anything said at that time with respect to where you were to be confined?

A Yes, sir, he said --

Q (Interrupting) Just a moment before you go into it. Was something said?

A Yes, sir.

Q Who said that to you?

A Mr. Freeman.

Q And what did Mr. Freeman say?

A He said that he was going to put me in solitary.

Q Well, were any instructions given to anyone down there to put you in solitary?

A Yes, sir, he told me -- Sergeant Young to take me down and put me in solitary.

Q Were you put in solitary?

A Yes, sir.

Q Whereabouts?

A Over here to the guard house at Fort Lawton.

Q At Fort Lawton?

A Yes, sir.

Q Tell the Court what you mean by solitary confinement?

A Well, solitary confinement, I was placed in solitary after I left the investigation at Seattle Port of Embarkation. I was carried down to the guard house and I was put in a cell, a cell that had only a little ventilation, opening in there. I didn't have anything to read; wasn't allowed to see anyone. When I was carried out I always had an M.P. with me. Wasn't allowed to speak to no one at no time.

Q Any windows in this room you were put in?

A No, sir, no windows.

Q How long were you in this cell during the period of solitary confinement you told us about?

A I didn't keep the right time, but I think around about five days.

Q At the end of that period were you taken any place else?

A No, sir, after I went down and give another oral statement I asked Major Manchester if I have to go into solitary, and he told me, no, I would go with the rest of the boys.

Q When was that with respect to the time --

A That was two days later.

Q Two days later?

A Yes, sir.

Q Now, do you recall a later time when you were asked to make a written statement?

A Yes, sir.

Q Now, at that time how many times had you been taken down for questioning?

A Four times. I hadn't been exactly taken down for questioning because my first questioning I had was at the hospital.

Q That was at the hospital?

A Yes, sir.

Q After the time that you just told the Court about when Sergeant Young took off his coat and threatened you, how many times after that were you taken down to the Seattle Port of Embarkation or any place else for questioning?

A Three times.

Q Three more times?

A Yes, sir.

Q And was the time that you were asked to make a written statement one of those times?

A Yes, sir.

Q Now, on the day when you were asked to make a written statement who was present at the beginning of the interview with you?

A Colonel Williams, and a warrant officer, and myself at the beginning.

Q At the beginning?

A Yes, sir.

Q Did Colonel Williams make any explanation to you of what your rights were as a witness?

A Well, no, sir. He didn't say what my rights was, no, sir.

Q Tell the Court what he said to you.

A Well, Colonel Williams, he was on the edge of the table, he say that -- he actually say, "Snow, you have been informed; you have come down here for questions". I told him, "Yes, sir," and he say, "Well, no need of me reading you the 24th Article of War; you perfectly understand," and I told him, "Yes, sir".

Q Did anybody else that day make any explanation to you of what your rights were as a witness?

A No, sir.

Q Did anyone else that day make any reference to the 24th Article of War?

A No, sir.

Q You say that Colonel Williams and some warrant officer were present at the start of this period of questioning. Now, at a later time were there others that came into the room?

A Yes, sir. Major Manchester and Colonel Jaworski.

Q Were they present all of the time or only part of the time?

A No, sir, they wasn't present all of the time.

Q Now, you were asked to make a written statement, were you?

A Yes, sir.

Q Now, before you had made that statement and delivered it to anyone, did you have any conversation with Major Manchester or anyone else with respect to your again being confined?

A Yes, sir.

Q What was that conversation?

A At the ending of my oral statement, when we was all fixing to leave the room that afternoon, Major Manchester asked me if I wanted to go back into solitary, and I told him no, sir; if he didn't see fit for me to go back into solitary I didn't want to go.

Q Was that before you made the statment, which is Prosecution Exhibit 37?

A Yes, sir.

Q Before you had done any writing at all?

A Yes, sir.

Defense: I think you may examine.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Private Snow, do you remember pretty well the occasion when Colonel Williams examined you?

A Yes, sir.

Q Your recollection is pretty clear about that?

A Yes, sir.

Q. You remember the fun you had with Colonel Williams joking and laughing?

A. No fun. I was just carrying on.

Q You were just carrying on, is that what you said?

A Yes, sir.

Q Well, you were carrying on along the lines of joking, weren't you?

A Well, at the first beginning it wasn't but after all we just run it in as a family conversation.

Q It was a sort of family conversation. You kind of liked

Colonel Williams, didn't you, when he was talking to you; I mean, you kind of liked him as he was talking to you, joking with you?

A I couldn't say I kind of liked him. I didn't have any dealings-- that was the second time I had saw him.

Q But from the dealings you had with him that day you kind of liked him?

A Well, I can't say yes or I can't say no.

Q Well, which one?

A I wouldn't say either one.

Q You wouldn't. Don't you remember as he asked you some questions and you gave the answers you begin to laugh about some of your answers?

A Sure, I begin to laugh about some of the answers.

Q And you thought Colonel Williams was a pretty good fellow at the time he was examining you -- at the time he was examining you?

A As far as I know he is all right now.

Q Yes. You still think he is a pretty good fellow, don't you?

A Sure, I think he is all right, sir.

Q Well, when he would ask you something you would come right out and give him the answer truthfully, didn't you?

A I gave him the answer to his questions I had given previously to Major Manchester.

Q Well, you told Colonel Williams the truth, didn't you?

Law Member: Wait a minute. Let's not go into that.

Trial Judge Advocate: That goes on the question of how voluntary his attitude was at that time. There is nothing more to be offered at this time in connection with his examination. It is just purely a question of his reaction at the time he was examined.

Law Member: But remember always, Colonel, that the truth or falsehood of the proposed exhibit is not at issue.

Trial Judge Advocate: Not at all, except this is directed purely to the question of whether he was at that time acting voluntarily.

Law Member: You can ask him that question; but whether or not he was telling the truth, you can't ask that.

Trial Judge Advocate: But isn't that the way of arriving at the question of whether he was acting voluntarily or not?

Law Member: Well, I don't like the form of the question. You can ask him if he was acting voluntarily, if he knows what voluntarily means.

Trial Judge Advocate: Well, that would be a conclusion and I don't believe I can ask that. Well, let's see if we can get at it in another way.

Q Now, whenever Colonel Williams asked you a question you answered it very readily, didn't you?

A Yes, sir.

Q You didn't hold out on him, did you?

A No, sir, because he was asking me the same question probably that Major Manchester had asked me about before.

Q And when you answered him, you answered him to the best of your ability, didn't you?

A That's right.

Q You weren't setting up there trying to lie to anybody at that time, were you?

A I wouldn't say that. No, I wasn't.

Q No, of course not. As you told your story about what happened down there you thought it was kind of funny and you got to laughing considerably, quite a bit, didn't you, Private Snow?

A I laughed about it some.

Q And Colonel Williams laughed with you, didn't he?

A Yes, sir.

Q All right. Now, you weren't under any fear at that time when Colonel Williams was questioning you, were you?

A No, sir. I wasn't under any fear at that time, but I had been, though.

Q But you had been some time previous. But you weren't when Colonel Williams talked with you? I am talking about Colonel Williams; at the time you and Colonel Williams talked. Forget about this other thing for the time being. At the time you and Colonel Williams were talking you weren't under any fear, were you?

A I would say yes.

Q You would?

A Yes, sir.

Q Had Colonel Williams said or done anything to you that caused you to be fearful?

A No, sir, there wasn't.

Q Had anybody else in the room said or done anything to you that would cause you to be afraid?

A No, sir.

Q As a matter of fact, you were very much at ease?

A I was at ease, but still I had fear.

Q What fear did you have? That charges would be filed against you?

A Not no charges would be filed against me, but I thought he was telling me -- they were going to tell me I wasn't telling the truth and put me back in solitary.

Q But he didn't tell you that?

A No, he didn't bring it up in his statement.

Q Never said a word to you about that, did he?

A No.

Q There wasn't anything Colonel Williams or anybody else in that room at any time said to you that would cause you to feel that? Now, isn't that right?

A Major Manchester, he say it last after my statement. Major Manchester spoke to me.

Q That was after Colonel Williams had talked to you?

A But it was in the room.

Q You said at the last. That was after Colonel Williams had interviewed you?

A Yes, Colonel Williams had interviewed me.

Q So if Major Manchester made that statement later on, then you weren't afraid of that while you were talking to Colonel Williams, were you? You weren't afraid of any solitary confinement when talking to Colonel Williams because Major Manchester didn't tell you that until later on? That's right, isn't it?

A I had already had fear about it before going down there, that that was what they were going to do, because they were carrying me back down in the investigation. I went down in several investigations.

Q Let's talk about this particular investigation. Now, at the time you went down to talk to Colonel Williams, and pretty early in the game while you were talking, you all were laughing and you were joking, and you were joking about what happened to you, and you weren't under any fear then, were you?

A Can I explain what we were joking about?

Q Well, I would be perfectly willing but I am afraid the Court wouldn't want that to come in at this time. As far as I am concerned, it is all right if Defense Counsel --

Defense: I am perfectly willing.

Law Member: Well, I am not.

Defense: We don't know what he is going to say.

Law Member: Well, I have a hunch he is going to say something in that statement, and at the present time we are not interested in it.

Q All right, answer this much of the question. At the time you and Colonel Williams were laughing and joking you weren't under any fear then, were you?

A Sure I was under fear, because I was afraid Colonel Williams was going to say I wasn't telling the truth, because I --

Q He never did say that?

Defense: Let him finish his answer.

Q What did you start to say?

A -- (continuing) because I had already given Colonel Williams a statement before.

Q Colonel Williams?

A Yes, sir.

Q That was the first time you ever talked to Colonel Williams.

A No, I said I had talked to him in the hospital.

Q To Colonel Williams?

A That's right.

Q You are sure of that?

A I am sure of it.

Q Or to Major Manchester?

A Colonel Williams.

Q All right, let's go to the hospital time. At the time you talked to him in the hospital how long did you talk to Colonel Williams?

A I would be afraid to say. About thirty minutes.

Q And who was present then?

A Well, his stenographer and two captains.

Q Two captains and a stenographer?

A Yes, sir.

Q And Colonel Williams and you?

A Yes, sir.

Q Well, now, you say you talked to Colonel Williams at that time?

A Yes, sir.

Q Did Colonel Williams say anything to you at all that frightened you during that time?

A No, sir, he didn't.

Q Now, then, you didn't have any fear while Colonel Williams was talking to you?

A Not at that time I didn't.

Q Well, all right. So at the time Colonel Williams took your statement there at the hospital you had no fear at all; that is just what you got through saying, isn't it?

A Yes, sir.

Q All right; fine. Well, what caused you to have fear when Colonel Williams was talking to you at the Port of Embarkation?

A Well, I had been giving a previous statement and he hadn't believed any of that, and I already been put in solitary after that. I thought he was going to put me in solitary again.

Q You mean you were placed in solitary after Colonel Williams talked to you at the hospital?

A Not after Colonel Williams talked to me but I had been put in solitary after major Manchester had talked to me.

Q Major Manchester talked to you before Colonel Williams talked to you?

A No, sir.

Q He didn't?

A No, sir.

Q You are sure of that?

A Positive.

Q Colonel Williams was the first man talked to you?

A Yes, sir.

Q No one had talked with you until Colonel Williams had talked with you?

A No, sir.

Q You are absolutely sure of that?

A I am sure of it.

Q Well, did you tell Colonel Williams the same thing at that time, the time he talked with you at the hospital, that you told Colonel Williams at the Seattle Port of Embarkation?

A No, sir.

Q You told him a different story?

A Yes, sir.

Q All right. Now remember you have said that the first time you talked with Colonel Williams at the hospital you weren't under any fear at all. Colonel Williams was kind to you, wasn't he?

A Yes, sir.

Q And you say at that time you gave him a different statement than you gave Colonel Williams later on when he talked to you at the Seattle Port of Embarkation?

A Yes, sir.

Q Now, between the first time that Colonel Williams talked with you and the time he talked with you at the Seattle Port of Embarkation you say Major Manchester talked with you?

A Yes, sir.

Q Who else talked with you?

A No one else.

Q Just Major Manchester?

A And the man under Major Manchester talked to me.

Q And they were the only ones talked with you?

A Yes, sir.

Q All right. That makes three times. Where was the fourth time?

A They were carrying me backward and forward down there. Major Manchester, he carried me -- he put me in solitary, this Mr. Freeman did. Then when I stayed in solitary about three days I sent for him -- they sent for Sergeant Young -- to make a different statement.

Q As a matter of fact you were never placed in solitary?

A Yes, sir, I were.

Q Do you know those are cells in the guard house? You weren't in the stockade, you were at the guard house, but you were not placed in solitary a single time.

A I was locked up in those cells in the guard house.

Q But you weren't anymore in solitary confinement at that time than you were at any other time when placed in the guard house; you were placed in a cell. There are a number of cells all of the same kind in that guard house, aren't there?

A No, sir.

Q Several of them?

A Only two.

Q Just two cells in that guard house?

A Yes, sir.

Q Is that all?

A Others just out in the rain for the other fellows to come in there. These two are too particular.

Q And you were in a cell?

A Yes, sir.

Q And how long were you there?

A Around about five days I would say.

Q You got your meals just like anybody else got them, full meals, didn't you?

A Yes, I got my meals.

Q Where?

A Down here to the other stockade.

Q Why, sure. They took you down to the mess hall and fed you, didn't they?

A Yes, sir.

Q You ate with the rest of the men over there, as a matter of fact, didn't you?

A No, sir.

Q With whom did you eat down there?

A With an M.P. I was always kept from off the rest of the men.

Q For five days?

A Yes, sir.

Q And yet you ate down at the mess hall?

A Yes, sir, I ate at the mess hall.

Q Others were sitting around and eating there?

A At a particular table. He would carry me off where anyone wasn't sitting around.

Q You sat at one table and they at other tables?

A All from me.

Q At the next table?

A Well, they was off to the other side, table, of the mess hall.

Q All right. Now, at the time Colonel Williams talked with you then at the Seattle Port of Embarkation, during that time when you have told the Court you were laughing and joking and having a good time and carrying on as you say you were, you were again questioned only by Colonel Williams at that time, weren't you?

A Yes, sir.

Q And there was nothing that Colonel Williams said to you during that entire conversation that could have created any fear in you; that caused you to have any fear; that is correct, isn't it?

A No, sir.

Q He didn't say a word to you?

A No, sir.

Q All right. Now, after you got through and after Colonel Williams got through talking with you and questioning you, then he asked you, didn't he, if you would care to sit down and write a statement of your own? He asked you that,

didn't he?
A No, sir

Q What did he ask you?

A When we got through with the last part of our conversation, you was sitting over on the sofa and you raised up and said, "Private Snow," -- and I said, "Yes, sir" -- "How much education have you had?" and I say, "10th grade," and you said, "What school you attend?" and I said, "Lakeside Training School in Leesburg, Florida" and you say, "Would you mind writing out the statement you have given Colonel Williams in this room for me, please?" I told you, "Yes, sir".

Q Now, that is exactly what happened?

A Yes, sir.

Q All right; fine. And you were very happy to come and write that statement, weren't you?

A Well, I wasn't happy to come and write a statement. When you said those words, Major Manchester, he say, "You wouldn't want to go back in solitary, would you?" and I say, "No, sir." I say, "No, sir", and that was all the saying in that room that afternoon and I was taken back down to the large compound until the next morning.

Q Now, wait just a minute. Are you telling this Court that after I asked you like you said, asked you if you cared to give a statement, if you would mind giving a statement, and you say I asked you if you minded, please?

A Yes, sir.

Q And you say you didn't mind?

A Yes, sir, that is what I say.

Q You mean after you said you didn't mind that Major Manchester then said, "Snow, you wouldn't want to go back into solitary"; is that what you are telling this Court?

A You say, "Snow, would you mind giving me a written statement of what you have told Colonel Williams in this room this afternoon?" I told you, "No, sir," and Major Manchester, he say, and in these words --

Q (Interrupting) Right then?

A Yes, sir.

Q At that time?

A Yes, sir.

Q All right, go ahead.

A "Snow, you wouldn't want to go back into solitary," and I say, "If you don't feel fit for me to go back into solitary I wouldn't like to go".

Q You already said you didn't mind giving the statement; you just go through testifying you had already told me you

didn't mind giving that statement before Major Manchester said that.

Defense: Are you asking a question or making an assertion?

Trial Judge Advocate: I am cross-examining your witness.

Defense: I don't know anything in the statement Counsel has made that can be answered by this witness.

Trial Judge Advocate: Let's see if there isn't.

Q Isn't it true you said just a few minutes ago to this Court that you had already told me you didn't mind giving a statement, that you would give it, before Major Manchester said that; didn't you so testify?

A No, sir.

Q All right. Let's go back over it and make sure you understand. Didn't you say after I asked you if you minded giving me a written statement, that you said no, that you didn't mind; you were willing to give it. That is correct, isn't it?

A I say these words. You asked me would I give you a written statement --

Q (Interrupting) Yes.

A -- (continuing) and Major Manchester cut in and say "Snow, you wouldn't want to go back into solitary?" and I say, "No, sir.

Q That is not what you told this Court a few minutes ago, is it?

A And then he stated, would you give me a written statement, and I told him, yes, sir.

Q Private Snow, that is not what you told this Court a few minutes ago, is it; it is not what you told this Court a few minutes ago, is it?

A Yes, sir.

Q Haven't you changed your story?

A No, sir.

Q Didn't you tell this Court a few minutes ago you answered that you didn't mind giving me that statement, and then Major Manchester spoke up and said, "Snow, you don't want to go back into solitary". Isn't that what you testified to this Court a few minutes ago?

A No, sir, it was before I answered you.

Q Well, the Court heard the testimony. Well, after Major Manchester said what you say he said, then what did you do?

A What did I do?

Q Yes.

A We all left the room together.

Q Who all left the room together?

A All of us. Went out -- they all went up towards Major Manchester's office, and Sergeant Young was standing out there with a raincoat on and a rain cap over his garrison cap, and we went down the stairs together.

Q Where did you write this statement?

A I didn't write the statement until the next morning.

Q You didn't write the statement until the next morning. How did that happen?

A Well, when I came back the next morning I was sitting out in the hall, where it is entering from the hall in a large room -- the large room -- and the T-4 Sergeant, Sergeant Fiske, came to me and brought a tablet and asked me to write my statement, what I say I would write, and I began to write my statement out in the hall; and when I finished the statement I carried it into Major Manchester's office and showed it, and Sergeant Young -- and Sergeant Young he read it, and he say, "This all you have written?" and I say, "Yes" and he say, "You sit down there and see if you can think of anymore you can write on the statement". And I sit on one side of the table and I didn't write anymore statement; and finally you came in there and he say, "Here is Snow with the statement." You take the statement up and read and start to go out, and you stopped and turned around and you came back in and say, "Private Snow, what does 'S' stand for in your name; you didn't fully write your name out" and I say, "No, sir." You say, "That can stand for Sol or Sam or anything; would you mind writing the rest of your name?" and I take and I write in the rest of my name out on the statement.

Q Is that all that happened?

A Yes, sir.

Q That is all that happened?

A Yes, sir.

Q Nothing else said?

A Nothing else said. You take the statement and went on down the hall.

Q Are you sure I didn't tell you at that time that if you didn't deliver that statement to me I was going to throw you into solitary?

A No, sir.

Q You are sure of that?

A I am sure you didn't say that.

Q All right. Now, how long did it take you to write that statement?

A Took about -- oh, take about thirty minutes, I guess.

Q Thirty minutes?

A Yes, sir.

Q How much education did you tell Major Beeks you had? He referred to you as being -- well, all right. How much education did you tell him you had?

A I didn't tell him I had any.

Q You didn't?

A No, sir.

Q Well, How much education did you tell the Colonel you had?

A I told, and in my statement I told, I went through the tenth grade.

Q Tenth grade. Did you finish the tenth grade?

A No, sir.

Q Went into the tenth grade?

A Yes, sir.

Q And where was that?

A At Leesburg.

Q Where?

A Florida.

Q Now at the time that Colonel Williams talked to you at the Seattle Port of Embarkation you then felt that you could be forced to make a statement, didn't you?

A When Colonel Williams --

Q (Interrupting) Yes, when Colonel Williams talked to you at the Seattle Port of Embarkation your idea was you could be forced to make a statement?

A Yes, sir.

Q And no one had ever told you before that you didn't have to make a statement unless you wanted to?

A Major Manchester, he had told me that -- he read the Article of War to me and told me about the rights of a soldier.

Q What did he tell you about that?

Defense: Let him finish.

A That I didn't have to make a statement; I could walk out of his office if I wanted to but he would advise me not to go out.

Q He advised you not to?

A Yes.

Q Well, did you take his advice?

A Sure I took his advice.

Q And you didn't walk out?

A No, sir.

Q Now, when Colonel Williams questioned you, what did he advise you?

A Colonel Williams? He didn't advise.

Q He didn't advise you?

A Only thing Colonel Williams told me, he just asked me -- he say I had been coming down for investigation and Major Manchester had read to me the 24th Article of War, and I told him, "Yes, sir," and he say, "Not necessary for me to go over and explain it again," and I told him, "Yes," and he didn't.

Q And when Colonel Williams talked with you what did you think your rights as a witness were? What did you think your rights were?

A I didn't think anything of the rights.

Q Well, all right. You told Colonel Williams and you are telling this Court you understood?

A I did tell him I understand.

Q What did you think your rights were at that time?

A I didn't know what my rights. I know I was down there for an investigation and I thought if I was to tell him that, he wasn't going to explain it anyway.

Q Oh! The man you just told this Court had been very kind to you and who you had nothing against, Colonel Williams, you are now telling this Court he wouldn't have explained it to you anyway.

A I wouldn't want the Court believes it. I just say it.

Q You don't care whether the Court believes it or not?

A I wouldn't make no expression.

Q Now, when you told Colonel Williams at the Seattle Port of Embarkation that you understood your rights under Article of War 24th, what did you mean?

A My rights?

Q Yes; what did you mean?

A Well, I just mean that I understood it.

Q Well, what did you understand?

A I didn't understand anything.

Q Well, what do you mean then by telling Colonel Williams that you understood it?

A I was just telling him.

Q You were just telling him. You mean you were telling him an untruth; is that what you mean?

A Well, I didn't know.

Q Why didn't you tell him you didn't know?

A Well, I just didn't tell him.

Q You just didn't tell him, no, but what you told him was you did understand your rights?

A I told him I did understand them.

Q Did you or not understand them?

A I had not -- well, I had understood before what Major Manchester had say.

Q Did you understand that at that time?

A What Major Manchester asked me?

Q Yes. Did you understand that at the time Colonel Williams talked to you?

A What Major Manchester had read to me and explained to me, I did understand that, but Colonel Williams did not read anything or did not explain anything to me.

Q I understand that. But why did you tell Colonel Williams you understood your rights?

A I was referring back -- he referred back to Major Manchester and that is what I thought he was going on, the same procedure Major Manchester had.

Q The truth of the matter, however, isn't it, you came up to talk to Colonel Williams and you were very eager, you were very anxious, to give a statement, weren't you?

A No, sir, I wouldn't say I was eager to give no statement.

Q You mean to tell this Court you weren't eager to give a statement to Colonel Williams the day you were up there?

A No, sir.

Q You weren't eager to give him a statement, is that your testimony?

A Yes, sir.

Q The truth of the matter is you had hoped someone would get a clemency for you and didn't you ask for it?

A Yes, sir, I did.

Q And you haven't gotten it and that is the reason you are taking the stand and saying these statements weren't properly gotten; isn't that the truth?

A No, sir.

Q Didn't you just about ten days or two weeks ago send for Major Manchester?

A Yes, sir.

Q Why did you send for him?

A I sent for Major Manchester --

Law Member: Just a minute. Is that material on this issue?

Trial Judge Advocate: Oh, his credibility, you Honor. Very material; very material. It goes to another thing the Court can foresee itself. His sending for Major Manchester, the man whom he claims mistreated him. Well, let's go into it and see.

Defense: He didn't claim Major Manchester mistreated him.

Trial Judge Advocate: He said Major Manchester threatened to throw him in solitary confinement. If that isn't mistreatment, I don't know what it is.

Law Member: That is in the record. But let's confine it to that.

Trial Judge Advocate: If the Court please, all I want to do is show by this witness he sent for Major Manchester about a week or ten days ago, and I want to know why.

Law Member: And he has admitted why.

Trial Judge Advocate: Let's find out why he sent for him.

Law Member: No, I don't believe that is material. I am afraid of that.

Trial Judge Advocate: Well, do you mind listening to the testimony and then striking it if it isn't proper. I think I know what he is going to say, the facts about it, and I wouldn't be asking it if I didn't feel --

Law Member: (Interrupting) I am not going to allow that, Colonel.

Trial Judge Advocate: I beg your pardon?

Law Member: I am not going to allow that. It may remain in the record he sent for Manchester ten days or two weeks ago, but don't pursue that further.

Q Well, you sent for Major Manchester about ten days or two weeks ago, didn't you?

A Yes, sir.

Q As a matter of fact, I believe you already had a lawyer representing you at the time you sent for Major Manchester, didn't you?

A Yes, sir.

Q And you wanted to talk with Major Manchester confidentially,

didn't you?

A During the time I was out here at Fort Lawton. I didn't have no Defense Counsel then what I had written him. Major Manchester didn't come to me until I came back here. I didn't know I had a Defense Counsel.

Q Oh, you wrote him a letter and asked him to come and see you?

A Yes, sir.

Q And you wrote the man whom you said threatened to throw you in solitary confinement and who had previously once before put you in solitary confinement; you wrote him a letter and asked him to come and see you?

A That's right.

Q All right. Now, at the time --

Defense: (Interrupting) If the Court please, I just want the record to show here that I haven't objected to Counsel using those words, that Major Manchester threatened to throw this man in solitary confinement, but there isn't a single iota in this record this witness so testified.

Trial Judge Advocate: There certainly is.

Law Member: Just a minute, Major Beeks. This witness has testified that at the time of the delivery of the statement to somebody there was a certain conversation between Colonel Jaworski and the witness.

Defense: That's right.

Law Member: And that then there was a reference in words or substance, or some testimony in certain words or substance, that Major Manchester then said, "You don't want to go back to solitary confinement, do you?"

Defense: That's quite correct. You have correctly stated it.

Law Member: Well, the Court knows what is in the record.

Trial Judge Advocate: That's right. The only implication is if he hadn't given this statement he would have put him in solitary confinement.

Defense: And that may have been the intention of the assertion.

Trial Judge Advocate: All right. Yes. Are you objecting to it?

Defense: I am not going to have you call it a threat in your questions to these witnesses -- in these double-barrelled questions.

Trail Judge Advocate: You may not like the questions.

Q Private Snow, when you were up there and Colonel Williams was questioning you -- now get this question. I want you to be sure and understand it. You understand you are under oath, of course; you fully understand that, don't you?

A Yes, sir.

Q All right. I want you to listen carefully to this question. When Colonel Williams was questioning you at the Seattle Port of Embarkation, didn't you know at that time that he couldn't force you to make a statement unless you wanted to make one?

A No, sir.

Q You didn't know that?

A No, sir

Q Did you think at the time Colonel Williams could force you to make a statement if you didn't want to make one?

A Yes, sir.

Q You did?

A Yes, sir

Q You want to really tell this Court you believe that he could have forced you to make a statement at that time?

A Yes, sir

Q Well, he didn't attempt it, did he?

A No, sir; he didn't attempt it.

Q And you came right out and give him a statement of your own volition?

A I give him a statement I had given Major Manchester.

Q You give him the same statement?

A Yes, sir.

Q Exactly the same statement?

A Yes, sir.

Q You are sure of that?

A I am sure of that -- in the words I gave Major Manchester.

Q And you thought when Colonel Williams was sitting there talking with you and joking with you, and you were joking with him, you thought that you could be made to give a statement at that time?

A Yes, sir.

Q And you are sure of that?

A I am sure of it.

Q And is that the reason you gave that statement?

A Well, I had already given it, and he just asked and I give

him the statement I had previously given.

Q Is that the reason you gave that statement is because you though Colonel Williams could force you to give the statement; is that correct; is that the reason you gave it?

A That I had given a statement to Major Manchester and he asked me would I give a statement. He asked me the question and I answered him.

Q Did you answer those questions because you felt that Colonel Williams could force you to make a statement; is that the reason you answered them?

A I wouldn't say that is the reason.

Q The only reason, as a matter of fact, why you gave that statement, is because you wanted to give it that day, isn't it; you really wanted to, didn't you?

A I didn't want to give a statement on that day, but I had already given a statement. I had already given a statement.

Q But the statement you gave that day to Colonel Williams, the only reason you gave it is because you wanted to give it to him, isn't it?

A It wasn't the only reason I wanted to give it to him.

Q What other reason did you have for giving it to Colonel Williams if it wasn't because you wanted to give it to him?

A Because I had given the statement to Major Manchester and I didn't want to have my statement anymore.

Q You didn't have to give him any statement, did you?

A Well, he didn't say I had to give him any statement. He didn't say I had to.

Q Is that the only reason you gave Colonel Williams a statement?

A Yes, sir.

Q The only reason?

A Yes, sir.

Q Well, why did you give this written statement then?

A Because you asked me to.

Q Is that the only reason you gave it, because I asked you to?

A Yes, sir.

Q And are you sure of that; that is the only reason, because I asked you to?

A Yes, sir.

Q You didn't give it because you felt you had to, did you?

A Well, I was under the impression -- you didn't make no distinction. You say, "Private Samuel Snow, will you write these words out, on paper, out as you have said in this room today." You act like you were giving me a command or an order.

Q You have told the Court exactly what I said. Is that what you construe as an order or a command? Does your superior officer when he gives you a command say please to you?

A He doesn't say please.

Q Didn't you tell the Court I said please to you?

A That's right.

Q What do you mean when you tell this Court I gave you a command or order?

A You state it in a commanding way, but you put some more words, some additional words.

Q I said it in a commanding way, and I would say, "Private Samuel Snow, would you now write in your handwriting what you have previously said in this testimony, please"?

A For me.

Q That is the way you took it; is that what you want to tell to the Court?

A That is what you say, "For me, please".

Q Yes; for me, please. And you took that as a command?

A Just like if I wanted anything done and I wanted it done, I would just say -- just show appreciation. That is the way you spoke, showing appreciation, that's all.

Q Showing appreciation. Well, does your commanding officer show appreciation when he tells you to do something?

A My commanding officer, he just goes ahead and tells me.

Q Yes, just goes ahead and tells you what to do?

A Yes.

Q How long have you been a soldier?

A Seven months.

Q How long?

A Seven months.

Q Seven months. Have you ever had any other officer come to you and say to you to do something, please?

A No, sir.

Q No, sir. You sure haven't.

Defense: Why don't you have him say whether he had any officer say anything to him.

Q All right. You told the Court a minute ago that the only reason you gave this statement in writing to me is because I asked you to. Now, that is correct, isn't it?

A Yes, sir.

Q And that is the only reason that you have for giving it?

A Yes, sir.

Q And you weren't afraid at the time?

A No, sir, I wasn't afraid at the time.

Q and you didn't give it because you hoped to get any reward or any benefit; that's right, isn't it?

A I wouldn't say I wasn't and I wouldn't say I was, because you hadn't stated that I was -- that I would.

Law Member: What was that?

The Witness: I say he hadn't stated I would or either I wouldn't.

Q And you knew you didn't have to sit down and write this out unless you wanted to; you knew that?

A No, sir, I didn't.

Q You didn't know that?

A No, sir.

Q Well, you didn't ask whether you did or didn't, did you?

A No, sir, I didn't ask.

Q When I asked you, as you say, to write that, you said immediately that you were willing to, didn't you?

A I say yes, sir, I would write it. I didn't say I was willing.

Q You said yes, sir, you would write it?

A Yes, sir.

Q And the only reason you wrote it is because I asked you to?

A Yes, sir.

Q Then the fact that Major Manchester, as you have tried to tell this Court, said to you that you would go -- that you wouldn't want to go back into solitary, that had nothing to do with your making that statement, did it?

A Well, I thought if I didn't make the statement, write the statement, I would go back.

Q That is not what you told the Court a minute ago. you told the Court the only reason you made that statement is because I asked you to, didn't you?

A Yes, sir.

Q Are you standing by that or do you want to change that?

A I don't want to change it.

Q You want to stand by it?

A Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Private Snow, how long were you in the hospital?

A About twenty days, sir.

Q That then brought you up to about the first of September?

A Brought me up to about the first of September.

Q Did you get out of the hospital about the first of September?

A No, sir.

Q When was it?

A I think I come out of the hospital around about -- I wouldn't be sure -- but around about the 28th, I think it was.

Q 28th of August?

A Yes, sir.

Q And where were you taken to stay after you got out of the hospital?

A I was taken down here to the large prison compound.

Q In what has been referred to as the stockade?

A Yes, sir.

Q Or in the guard house?

A Stockade.

Q Now, how long were you kept there before you were taken down to the Port of Embarkation?

A About four days.

Q Prior to your being taken down there had you ever seen Sergeant Young?

A No, sir.

Q Had you ever seen Mr. Freeman?

A No, sir.

Q And how did you come to go down there to the Port of Embarkation?

A Well, Sergeant Young, he come out there and got me.

Q Sergeant Young did?

A Yes, sir.

Q And who else was present?

A Sergeant Young came after me.

Q You went down with him alone?

A No, sir, there was some more boys he called out.

Q Who questioned you that first time at the Port?

A Major Manchester. Major Manchester and them, Sergeant Young and Sergeant Fiske and Mr. Freeman, and I think there were

three more fellows.

Q And after being questioned were you then taken back to the stockade?

A No, sir.

Q Where were you taken then?

A I was taken to the guard house.

Q Do you remember about when that was?

A I think that was about --,no, sir, I don't.

Q Now, describe for us the place where you were put in the guard house?

A Well, the place that I was put in the guard house was a little small room with one bunk, a little hard tweed bunk and some kind of steel slats, steel pieces of iron, you know, and a mattress, and you had a cover on in the daytime -- I mean, at night -- and they would take up the cover every morning. You would stay in there locked up.

Q And during the day were you allowed to go out with the other soldiers?

A No, sir. The only time you were allowed to go out is when you called the Sergeant of the Guard for relief to go to the latrine.

Q Well, the bed in that cell was the same as you had in the stockade?

A No, sir.

Q A different kind of bed?

A Yes, sir.

Q And it had a mattress on it?

A Yes, sir.

Q And covers at night?

A Yes, sir.

Q How long did you stay there at that time?

A About five days, I think.

Q And then were you taken down to the Port again?

A Yes, sir.

Q Was that the time that you made out this statement?

A No, sir.

Q Well, when you got done, through there at that time, where were you taken?

A I was taken back to the guard house.

Q Do you recall what date it was that you signed this statement?

A No, sir, I don't.

Q Well, after you signed this statement where were you taken?

A Well, before I signed it -- I was already down in the compound before I ever written the statement that I had given Major Manchester a statement.

Q Well, how soon after you left the hospital did you give Major Manchester a statement?

A About three days, three or four days.

Q That was three days after you got out of the hospital you gave Major Manchester a statement?

A Yes, sir.

Q Was that when you were taken out of the guard house and put in the compound?

A I was in the compound and put in the guard house.

Q Oh. You mean after you had given the statement to Major Manchester you were taken out of the compound and put in the guard house?

A Yes, sir.

Q So that for making a statement to Major Manchester you were put in the guard house instead of being taken out?

A Yes, sir.

Q Now, how long did you remain in the guard house?

A About five days.

Q All together?

A Yes, sir.

Q and you were taken out of the guard house before you signed this statement?

A Yes, sir.

Q How many days?

A That was a pretty good while before I signed this statement.

Q In other words, you were taken out of what you have termed solitary confinement long before you signed this statement?

A Yes, sir. See, I give him one statement --

Q (Interrupting) Wait just a minute. Let me get your answer to that last question. You were taken out of what you call solitary confinement long before you signed this statement?

A Yes, sir.

Defense: I think the Court should give the witness a chance to explain.

Q Now make any explanation you wish.

A Well, I was put in solitary. When I went down and give my first statement, they didn't believe it, so they put me in solitary. They had taken me out of solitary and carried me back up for questioning, and I told them the same thing and

they carried me back and put me in solitary; and I sent for Sergeant Young, and it take about two days, and I went up and give the statement I have written out.

Q Then you were taken out and put back in the compound?

A Yes, sir, after I give that statement.

Q And that was long before you signed the statement that is now here in Court?

A Yes, sir.

Q How many days?

A It was a pretty good while.

Q A month?

A I would say so.

Q And during the time that you were in the compound before signing this statement you associated with the other soldiers. did you?

A Yes, sir.

Q You ate with them?

A Yes, sir.

Q You were treated just the same as all the other soldiers were?

A Yes.

Q And that was for a period of at least a month before you made out this statement?

A Yes, sir.

Q Now, when was the particular time that Sergeant Young took off his coat and said he was going to take a sock at you?

A That was the second day that I went back down to the Port. I have forgotten.

Q Did he hit you?

A No, sir.

Q That was the time that you told the same statement as you have told before?

A Yes, sir.

Q That they didn't believe?

A Yes, sir.

Q But he didn't sock you?

A No, sir, he didn't strike me.

Q How long after that time did you go down and make another statement?

A Well, he left me -- until I sent for him.

Q You sent for Sergeant Young who had previously threatened to sock you?

A Yes, sir.

Q You sent for him?

A Yes, sir.

Q To come and see you at the guard house?

A Yes, sir.

Q And then you went down again?

A Yes, sir.

Q Then after that time you came back and went into the stockade?

A Yes, sir.

Q And that was at least a month?

A Yes.

Q Before you signed this statement which is now offered?

A Yes.

Law Member: That is all.

President: Any further questions?

Trial Judge Advocate: I have one more question. Is the Law Member through?

Law Member: Yes, sir.

Defense: I am through.

RECROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Private Snow, I want you to tell this Court if at the time you sent for Major Manchester and Major Manchester came and talked with you, if during that conversation you didn't tell Major Manchester that you had given a free and voluntary statement about your connection with this case?

A I sent for Major --

Law Member: (Interrupting) Just a minute. Did you say that, Snow?

A No, sir.

Q Did you say anything like that?

A No, sir.

Q You are sure of that?

A I am sure; I am positive.

Q You are positive that you didn't tell Major Manchester during the course of that conversation that you had given a free and voluntary statement?

A No, sir. He didn't ask me.

Q I didn't ask you whether he asked you.

A No, sir.

Q You just never did make that statement?

A No, sir.

Q And you are very positive of that?

A Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have nothing further.

President: Any further questions? If not, the witness will be excused.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Trial Judge Advocate: If the Court please, in view of the testimony of this witness I am going to call a number of witnesses and, of course, they are witnesses I will have to check first where they are. I hope that they are available without too much delay, but I am going to have to call a number of witnesses.

President: You want a recess now?

Trial Judge Advocate: I beg your pardon?

President: You want a recess now?

Trial Judge Advocate: I just don't know. I will have to have a recess for a while.

President: We will take a fifteen minute recess and see if you desire any more time. The Court will take a fifteen minute recess and reconvene at 3:00.

The Court thereupon recessed at 2:45 o'clock p.m., and reconvened at 3:15 o'clock p.m., 1 December 1944.

President: Is the prosecution ready?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready?

Defense: Yes, sir, the defense is ready.

President: The Court will come to order.

Trial Judge Advocate: I just want the record to show that each of the accused, all personnel of the court, and the personnel representing the prosecution and defense are present.

The reporter was also present.

Law Member: Major, have you any other evidence to submit in opposition or to sustain any objection that might be made to the admission in evidence of Prosecution Exhibit 37?

Defense: The defense has nothing more at this time, sir.

Lt. Colonel Curtis L. Williams, a witness for the prosecution, was recalled and testified further, as follows:

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You are reminded you are still under oath.

A Yes, sir.

Q Colonel Williams, did you or not ever talk to the accused Private Samuel Snow when he was in the hospital?

A I did not.

Q Did you or not talk to the accused Private Samuel Snow more than one time?

A Only once to the best of my knowledge.

Law Member: Now, is that once before this time or once all together?

Q Once all together?

A Once all together.

Q And where did you talk to the accused Private Snow when you interviewed him?

A I think it was in the building down at the Port, the Goodrich Building.

Q And are you or not positive that you never did talk with him at the hospital?

A I am positive that I never talked with Snow in any hospital.

Trial Judge Advocate: No further questions.

RECROSS-EXAMINATION

Questions by Defense:

Q Did you ever talk to Snow anyplace other than down at the Port?

A I believe that I did not.

Q You believe that you did not?

A That's right.

Q You are not quite positive of it, though?

A To my best recollection only one time did I ever talk to Private Snow.

Q Did you ever talk to any witness in connection with this case in any hospital?

A Yes.

Q More than once?

A Yes.

Q And was that out here at Fort Lawton?

A I talked to two at Fort Lawton, one in Spokane and I believe those three are the ones I talked to.

Q Were they colored soldiers?

A There was one colored soldier, and one American soldier, and one Italian soldier.

Q And that was out here at Fort Lawton with the exception of the one that was in Spokane?

A Two at Lawton and one at Spokane.

Q Two at Lawton and one at Spokane. Now, when you speak of talking to them, do you mean going ahead and interrogating them with a reporter present?

A I talk of even seeing Snow in his case.

Q You have no recollection of ever seeing Snow?

A No, I never saw Snow in any hospital in my life.

Q Or you have no recollection of seeing Snow outside of the Seattle Port of Embarkation proper?

A Yes, I saw him once.

Q Outside the Seattle Port of Embarkation?

A Yes.

Q Where was that?

A That was in the mess hall of the stockade.

Q But you didn't talk to him at that time?

A No, I didn't talk to him.

Q By the way, when you saw him at the mess hall at the stockade was he sitting alone or with some other people?

A No, there was some seventy, I believe, all in a group.

Q At the time you saw him he was sitting at a table with other colored soldiers?

A Yes.

Defense: That is all

Trial Judge Advocate: No further questions.

EXAMINATION BY THE COURT

Questions by Law Member:

Q When did you say you arrived in Seattle originally?

A On August 29, 1944.

Questions by President:

Q When did you first start interviewing personnel?

A To the best of my knowledge it was on the Monday following the first of September, 1944.

President: No further questions. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Major Robert H. Manchester, Transportation Corps, a witness for prosecution, was recalled and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You are reminded you are still under oath.

A Yes, sir.

Q Major Manchester, do you recall the occasion when Private Samuel Snow was interviewed in connection with the matter relating to the Negro soldier incident at the Italian area at Fort Lawton?

A Which interview do you refer to, Colonel?

Q Well, do you recall any interview?

A I do, yes, sir.

Q Will you please tell the Court what you recall with respect to the first interview of the accused Private Samuel Snow.

A The first interview I had with the accused Private Samuel Snow, was, I believe, on the 6th of September, 1944, in an interview office at the Intelligence and Security Division at the Port of Embarkation.

Q Is that a closed or an open office down there; describe it?

A That is a closed office insofar as inclosure is concerned. The lower portion is made of wood and the upper portion is made of glass so that you can see through from the outside.

Q From how many different sides can you see?

A Three sides, sir.

Q Glass incased from three sides, is that what you mean?

A That's right, yes, sir.

Q All right, go ahead, Major.

A I questioned the accused Private Samuel Snow on that date

relative to his whereabouts on the night of the 14th of August, 1944. I do not recall who all was present at the interview or the questioning. I am certain that Sergeant Fiske, Sergeant Young, Mr. Freeman, Mr. Olson, and I believe Mr. Glasgow were present. I am not certain whether that is the date that General Denson was present or not. I read the 24th Article of War to the accused Private Samuel Snow; I explained it to him, as I explained it to all the other accused. Explained it at length. He stated that he understood it; he also understood my explanation. The questioning proceeded and I started by asking him preliminary questions as to his organization, where he was stationed on the night of the 14th of August, 1944, if he was at Fort Lawton with his organization, and if he was present on the post, all of which he stated he was. I asked him then to relate in detail to me, being as accurate as he could in name, times and locations, every place that he was during that particular night of the 14th of August.

Q Now, don't state what he said in answer to that, but just leave out his answers and then tell what transpired from that point on.

A Continuing, I asked him where he was during certain hours.

Law Member: You don't have to go into that, Major.

Q In other words --

A His statement continued until it was terminated.

Law Member: That is sufficient.

Q All right.

A At that time I asked accused Samuel Snow if he desired to add anything to the statement he had given me. As I recall it, he said he did not. I then turned to Sergeant Young, who was present in the room --

Q Private Snow present too?

A Private Snow was present, yes, sir.

Q All right.

A No one had left the room to my knowledge. I am certain the accused did not.

Q All right.

A -- (continuing) turned to Sergeant Young and told him -- Sergeant Young, I will explain, was acting as a Transportation Detail bringing different soldiers down -- and I told Sergeant Young that it was my desire that the accused Private Samuel Snow be segregated from the other accused who were held in custody at Fort Lawton; that I did not want him back with them for the time being, and I suggested that he make arrangements to put him in the post guard house at Fort Lawton.

Q Was he or not placed in the post guard house at Fort Lawton?

A Sergeant Young reported back to me that he was.

Q Now, are you acquainted with the set up of the post guard house at Fort Lawton, Major Manchester?

A No, sir, I am not.

Q Have you ever been on the inside?

A Two feet inside the door, sir, is the most I have been.

Q Did you or not at any time state that the accused Private Samuel Snow should be placed in solitary confinement?

A I did not.

Q To your knowledge was he ever placed in solitary confinement?

A Not to my knowledge, sir. My report was that he was in the post guard house.

Q All right. Now, let's stay with that first interview. During the course of that interview did Sergeant Young remove his coat at any time or not and tell the accused Private Samuel Snow he had a good mind to sock him if he didn't tell the truth?

Defense: Just a moment, if the Court, please. It is incompetent, irrelevant and immaterial as far as this witness is concerned. The testimony is in the record so far Major Manchester wasn't even there.

Trial Judge Advocate: Well, Major Manchester says he was there at that interview and the accused was never positive as to exactly what point of the interview this happened. There is no testimony as to what point of the interview it happened.

Law Member: My notes show that charges against Sergeant Young, at which time he took off his coat and said he was going to sock him if he didn't tell the truth, took place at the first interview they had at the Port.

Defense: Yes, that is true, but the witness said Major Manchester wasn't in there at that time.

Law Member: Who says it?

Defense: The accused Snow.

Trial Judge Advocate: We are not bound by what the accused Snow says.

Defense: You haven't asked this witness whether he was there all the time. There is no showing he was there all the time from the time Snow was brought in until he left.

Trial Judge Advocate: All right. The testimony of this witness shows he was actually there.

Defense: Well, does it? He has told me, but it hasn't been

brought out in the record yet.

Q Well, Major Manchester, who conducted that interview, that first interview?

A I did.

Q You conducted it alone?

A There may have been other questions asked by other investigators there during the time.

Q Who was in charge of that interview?

A I was.

Q You were. Now, did or not during the course of that interview Sergeant Young at any time say to the accused Private Samuel Snow that he had a good mind to sock him if he didn't tell the truth and say he was down in that area?

Defense: Now, the same objection, if the Court please. There hasn't yet been a showing that Major Manchester was present at this first interview from the time Snow was brought in until he left, and unless Counsel makes that showing, Major Manchester was present all the time, his testimony is incompetent, irrelevant and immaterial as far as this issue is concerned because Snow has testified he wasn't there.

Law Member: Well, of course, Major Manchester is testifying that he was.

Defense: But he isn't.

Law Member: Major, were you there all the time in this room that the accused Snow was there?

The Witness: Sir, that is the first time that question has been asked me. It is possible, remotely possible, that I left the room to answer a telephone, which was the usual procedure. If the phone rang and I was called into my office, I would leave and the interview would cease until I came back.

Law Member: At any time while you were present in that room with Snow at this first interview did you see Sergeant Young take off his coat and threaten to sock Snow if he didn't tell the truth?

The Witness: I did not.

Q Did you at any time while you were present, Major Manchester, hear Mr. Freeman say to the accused Private Snow that he was going to lay the murder rap on him?

A May I have that question again, sir?

Q Did you at any time while you were present at that interview hear Mr. Freeman tell the accused Private Snow that he was going to lay the murder rap on him?

A I did not.

- Q Did you at any time while you were present at that interview hear Mr. Freeman tell the accused Private Snow that he would never see his father and mother again?
- A I did not.
- Q Now, Major Manchester, do you recall the occasion when Private Samuel Snow was interviewed by Lt. Colonel Curtis Williams of the Inspector General's Department?
- A I recall a day that he was taken into a room where Colonel Williams was. I don't recall the day.
- Q All right. At that time did Colonel Williams conduct an interview of the accused Private Snow?
- A I was not present in the room, sir. I do not know.
- Q All right. Were you or not present at any time that day when the accused Snow was with Colonel Williams or when he had completed his session with Colonel Williams?
- A I was, yes, sir.
- Q All right. Do you remember the occasion of Private Samuel Snow making a statement in his own handwriting?
- A I remember the occasion of him signing a statement.
- Q All right. I will ask you if this Prosecution Exhibit 37 for identification is the statement to which you have reference?
- A It is.
- Q Whose initials are those up here in the upper right hand corner?
- A Those are mine, and they were put on there by me immediately after the accused had signed the statement.
- Q All right, sir. Now, did you at any time prior to the accused Private Snow signing that statement say to him or ask him if he wanted to go back into solitary confinement?
- A I did not.
- Q Did you say anything like that to him at any time?
- A I mentioned nothing about incarceration, open or closed, sir.
- Q What did transpire on the occasion that you saw the accused Private Snow sign this statement, Prosecution Exhibit 37 for identification?
- A Well, sir, immediately before I saw the accused and Colonel Williams in a room, in one of our rooms in our offices in the Goodrich Building, you came into my office some distance from the office in question and asked me if I would come into the room and witness a statement, witness the taking of a statement or an accepting of a statement. I told you I would, and I accompanied you to that room where the accused Private Samuel Snow and Lt. Colonel Williams were in a room together. On a table was the statement, which you have just shown me, written in its entirety without the signature of the accused. You asked me if I cared to ask the accused Private Samuel Snow any questions. I did ask him questions. I asked him if

the statement had been given because it was the truth and because he wanted to give it. He stated that it had been. I asked him if he understood or had been told, either of those, that he might be confronted with the statement in Court should charges be preferred against him and he brought to trial. He stated he did.

Q All right. Now, after he made that statement was or not this writing of Samuel Snow's, Prosecution Exhibit 37 for identification, delivered by Samuel Snow?

A After he had made that statement, sir, he signed his name and I believe serial number. The instrument was handed to you; you handed it to me and asked me to identify it by my initials in the upper right hand corner, which I did.

Q Major Manchester, have you received any communication from the accused Private Samuel Snow in recent days?

A I received a letter, sir. I am unable to state whether it was written by Private Samuel Snow or by Private Roy Montgomery.

Q Did you in response to that communication go to see the accused Private Snow, Private Samuel Snow?

A I did several days after the delivery of the communication to our offices.

Q Without going into what the conversation related to at the time that you talked with Private Samuel Snow in response to that letter, I will ask you whether or not anything during the course of the conversation was said with respect to a statement that he had given.

A There was.

Q Did he or not at that time make any reference to the voluntary or involuntary nature of that statement?

A He did. In response to a question from me.

Q And what was it he said?

Law Member: Limit yourself to that.

The Witness: Yes, sir, I understand.

A My remarks or questions were addressed both to Private Samuel Snow and to Private Roy Montgomery.

Law Member: Never mind Montgomery and strike it out. I am interested in Snow.

The Witness: May I ask the Law Member a question, please, sir?

Law Member: Yes. Maybe you won't have to ask it, Major, if I acquaint you with something. Did Private Snow in response to this letter which you referred to state to you, in words or substance, that he had made a voluntary statement?

The Witness: He did.

Q Well, Major Manchester, I will ask you whether or not during any conversation that Private Samuel Snow had with you he ever said to you that Sergeant Young or anyone else had threatened to lay their hands on him.

A No, sir, he did not.

Q Did he ever during any conversation he had with you tell you that Mr. Freeman or someone else had said to him that he would never see his mother and father again?

A No, sir, and on the contrary I was present at a time that he stated to another officer that he had been treated fairly and squarely throughout the investigation.

Q What officer was present when he made that remark?

A 1st Lieut. H. M. Vitacco, Assistant Provost Marshal, Seattle Port of Embarkation.

Q And when was that comment made by Private Samuel Snow?

A That was made during the course of the pre-trial investigation under Article of War 70.

Q And can you tell the Court approximately when that was as to dates?

A I would say between the 28th of October and the 1st of November, and I am very certain it was on the last day of October.

Law Member: I understand that statement was made to you in the presence of some other officer?

The Witness: No, sir, it was made to the other officer in my presence.

Law Member: That was who?

The Witness: Vitacco.

Q Where is he stationed, by the way, Major?

A He is stationed at the Seattle Port of Embarkation as an Assistant Provost Marshal.

Trial Judge Advocate: The prosecution has no further questions, if the Court please.

CROSS-EXAMINATION

Questions by Defense:

Q Major Manchester, what time of day was it that this written statement was obtained from Snow?

A I do not recall, sir.

Q You don't recall?

A No, sir, I do not.

Q Were you present at the time Snow was first brought in?
A On the last occasion?

Q On the only occasion, or as the case may be, that he was talked to by Colonel Williams?
A I was not present in the room, no, sir.

Q You were not present at that time?
A No, sir.

Q Was that on the same day Colonel Williams talked to him as he signed the written statement?
A Yes, sir.

Q It was the same day?
A Yes, sir.

Q You are quite positive of that?
A I am certain of it.

Q Well, what part of the conversation were you present at between Colonel Williams, Colonel Jaworski and Snow?
A I don't believe I understand you. Probably I should, but I don't.

Q Well, you testified that you weren't present at the time that Colonel Williams first started to examine Snow?
A Yes, sir, nor any time during his examination of him.

Q You weren't there at any time?
A No, sir, I was not in the office.

Q Oh. You went over for the first time then when Colonel Jaworski asked you to come over?
A That's right; When he came to my office and asked me to come.

Q Did you hear Colonel Jaworski make any explanation to Snow as to his rights as a witness or as an accused, a possible accused, with respect to any statements he might make?
A No, sir, not while I was present.

Q You didn't hear Colonel Jaworski?
A No, sir, I did not.

Q Now, Colonel Jaworski simply asked you to come over as a witness?
A That's right.

Q You had been in quite a number of conferences prior to that time in which Colonel Jaworski and Colonel Williams had both been present?
A I had been present at small portions of them; never through the entirety of them.

Q Well, you have heard a number of times Colonel Williams

explain to a witness his rights under the 24th Article of War, haven't you?

A Yes, sir, I have.

Q Do you think he did a pretty full and complete job of it?

A Well, I think he did an excellent job, sir. I thought for a while I was doing a good job but I thought he did a better one.

Q And how about Colonel Jaworski. Did he do a pretty good job of it?

A He knows more about law than I do, so I think he got it down better.

Q Well, I think he probably knows more than I do. You heard Colonel Jaworski on quite a number of occasions explain to witnesses their rights?

A Yes, sir. I never recall having heard him read it to them.

Q I know but you have heard him explain the rights to a witness if he made a statement; what would happen; what would be done with it?

A Yes, sir, I have.

Q Then on this occasion when you were simply asked, Major, to go in and witness a statement, why did you feel it was necessary for you to go into a long discourse in advising Snow what his rights were?

A I don't believe I went into a long discourse. I was asked by Colonel Jaworski if I wanted to ask the accused anything.

Q Did you feel it was necessary after Colonel Williams had asked him and Colonel Jaworski had both been talking to him for some period of time to explain to Snow his rights?

A I don't believe I have testified that I advised him what his rights were. I asked the accused Snow if he knew what they were.

Q You did ask him?

A Yes, sir.

Q What did you say to Snow at that time?

A In sum and substance, and it probably won't be word for word like I said before, but the substance of it --

Q (Interrupting) All right, give us the substance of it.

A I asked him if he had been advised of his rights; if he understood what his rights were, and if he realized or understood that the document that he was signing could -- he could be confronted with it in court in the event there was a charge filed against him and he were brought to trial.

Q Yes. Why did you feel it was necessary for you to make that explanation to him after he had been in the room with Colonel Williams and had a long conversation with him, been in the room with Colonel Jaworski and had a long conversation with

him; when you knew Colonel Williams and Colonel Jaworski could both warn him and advise him of his rights better than you could?

A I didn't feel it wasn't necessary. I was asked by Colonel Jaworski if I cared to ask the accused any statement or any questions.

Q I see.

A There was no one else -- go ahead, sir.

Q All right; tell us.

Trial Judge Advocate: Go ahead and answer your questions fully.

Q I don't want to cut you off.

A No, it is all right. I have been cut off before; you go ahead.

Q By me, Major?

A Not by you. You have been swell.

Q Major, just tell the Court everything that transpired with reference to Snow's signing that statement on that occasion.

A Will you explain just what you mean. You want me to repeat just what he said?

Q Well, you were present when Snow signed the statement?

A I was, yes, sir. I absolutely was.

Q Well, tell the Court what happened; all the circumstances and incidents you recall with reference to Snow signing the statement.

A We go back here; I will start from the beginning.

Q Yes.

A you pay attention so I won't have to do it again.

Q All right.

A I was called back into the room by Colonel Jaworski. I went back in the room. Colonel Jaworski, Colonel Williams, the accused and myself were all in the room.

Q All right.

A At that time.

Q I understand.

A You got that?

Q Yes.

A The paper was on the desk. Colonel Williams and the accused were in the room before we entered. I don't believe Colonel Williams said a word; I don't believe he spoke. The accused had the pencil in his hand and Colonel Jaworski asked him if he was completed with the statement. He said that he was. Colonel Jaworski asked me if I cared to ask him any questions.

There was nobody asked him any questions, and this may answer your other question as to why I asked him.

Q Let's confine ourselves to answering this one.

A This all would be in the same and then it will be all together.

Q All right, if it makes you happier, Major.

A It won't make me happier. No one else asked him any questions; no one else said anything about this warning -- about him being warned as to his rights and so forth -- and I asked the accused if he knew what his rights were. In fact, I believe I said, "Do you remember me explaining them to you?" I may not have said that, but that is my opinion and I am inclined to agree with myself right now. At any rate, after I asked him that, he said that he did, and I said, "you understand or you realize that this paper that you are signing, if it is an admission," -- and which I assumed it was -- "you might be confronted with that in court in the event you are ever brought to trial or charged with this offense," and he said he did. Colonel Jaworski said, "All right, sign your name and serial number to it." The accused signed his name and serial number to it and handed it to Colonel Jaworski, and Colonel Jaworski handed it to me and he asked me to put my initials on it and I did. And the next time I saw it, it was here.

Q That is all?

A That is all I remember.

Q How do you account for two signatures on this instrument?

A Well, that is very reasonable, very easily explained. He signed his name, and I don't recall his conversation and if you want me to testify to an opinion, swell.

Q Well, there was something else you haven't told us then about?

A No, an opinion wouldn't be something I haven't told you about.

Q What has opinion got to do with two signatures?

A A lot. He was there and he told him to sign the statement and he signed it, and while he was telling him to sign it he told him to put his serial number on, and then the accused goes ahead and writes his name and puts the serial number.

Q So he signed his name once and then he signs his name again, the second time when he asked for his serial number?

A I don't know. I didn't see him do that. I saw him sign his name.

Q I thought you said a moment ago his signature and his serial number were on there when you first examined the statement?

A Oh, no.

Trial Judge Advocate: I don't think he said that.

Defense: Well, he certainly did. He said after he got the statement back from the accused the name and serial number were on there and he put his initials up there.

Law Member: But you said the first time this witness saw the statement.

Defense: After he got it from the accused.

Law Member: All right.

The Witness: It was never back in the hands of the accused after I had it.

Defense: Now, I may have some further questions, if the Court please, but I am going to ask that the transcript of all the testimony of Snow which was taken at these interviews be produced in court. I am sure I will want it.

Trial Judge Advocate: You want to offer it in evidence?

Defense: Counsel, I will determine that when the time comes.

Trial Judge Advocate: I thought perhaps your mind would be made up.

Defense: If you will permit me to try my case, I will permit you to try yours.

Trial Judge Advocate: I just asked a question if you want to offer it in evidence.

Defense: How do I know. It is something I haven't seen.

Trial Judge Advocate: You have done stranger things than that. Now, I haven't the statement, if it please the Court, and I will have to get it; procure it at the earliest possible moment. We don't have it in our files, don't know where it is, but --

Defense: You didn't have any difficulty finding the one you brought the other day, Colonel?

Trial Judge Advocate: No, I didn't, but I didn't have that other statement either, Major. It so happened Major Manchester, who knew he would be called as a witness on that matter, did have it. I hope that satisfies you.

Defense: I wasn't asking you; I was asking the witness.

Law Member: Colonel Kaworski, can you have the requested documents in Court tomorrow morning?

Trial Judge Advocate: Colonel, I will certainly make every effort to have them. I don't know where they are, but I will certainly immediately have an investigation made as to where they are, and upon their being available I will have them produced. Be glad to produce them, in fact.

Defense: With that understanding, I haven't anything further of this witness at this time.

President: The prosecution have any further questions?

Trial Judge Advocate: I believe there was a question.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Prior to the time that you were called in and related what you did about the conversation with Private Samuel Snow, you have no knowledge of what previous warnings might or might not have been given either by Colonel Williams or by myself?

A No, sir, I have not, and I have so testified before.

Q Yes, sir. And was it or not in response to my question and my statement to you that you might be a witness to the delivery of this instrument, that you undertook then to question the accused about the voluntary nature of it?

A Certainly, sir. When you asked me to come back and witness it I had no other idea or impression but what I would be called as a witness.

Trial Judge Advocate: That is all, if the Court please, that we have.

President: No further questions?

Defense: I don't know if I will have anything further of this witness, but I would like to reserve the right to question him further if I want to.

Law Member: Your rights will be preserved, Major.

Defense: Thank you, sir.

There being no further questions, the witness was excused and withdrew.

Sergeant Ralph E. Young, Transportation Corps, a witness for the prosecution, was recalled and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q You have been sworn before and you are advised now you are still under oath.

A Yes, sir.

Q This is Sergeant what Young?

A Sergeant Ralph E. Young.

- Q Sergeant Young, did you or not participate in the investigation that was made of the Fort Lawton riot when Negro soldiers entered the Italian area on or about August 14, 1944?
- A I did, sir.
- Q Did you or not in connection with that investigation have occasion to be present when Private Samuel Snow was interviewed?
- A I was, sir.
- Q Now, Sergeant Young, did you at any time during the course of that interview or at any other time say to the accused Private Snow that you had a good mind to sock him if he didn't tell the truth?
- A No, sir.
- Q Did you at any time in connection with any interview of Samuel Snow or any time that you were in his presence remove your coat and make any remark to him?
- A Never, sir.
- Q State to the Court whether or not you were wearing a coat in the early part of September, 1944, in your office.
- A As a rule I never wore a coat in the office.

Defense: I think the answer is unresponsive and move to strike it.

Law Member: Ask him if he has any particular recollection about wearing a coat during any of the interviews with the accused Snow.

The Witness: No, sir, it would be out of the ordinary if I did.

- Q All right. Did you or not during the course of those interviews ever hear Mr. Freeman or anyone else say to the accused Private Samuel Snow that he or others were going to lay the murder rap on him?
- A No, sir.
- Q Did you at any time hear Mr. Freeman or anyone else during the course of that interview or any other interview say to the accused Private Samuel Snow that he would never see his father or mother again?
- A Absolutely not.
- Q Do you recall the occasion when Major Manchester said something to you with respect to the confinement of the accused Private Samuel Snow?
- A Yes, sir.
- Q Was he subsequent to that conversation at any time placed in solitary confinement?
- A No, sir.
- Q What was done with him?

A He was lodged in the guard house.

Q Are you acquainted with the setup at the guard house?

A I am, sir.

Q Are there or not any solitary confinement cells in that guard house?

A There are not, sir.

Q Did you at any time that Samuel Snow was interviewed or at any time while you were in his presence say anything of a threatening nature to him?

A No, sir.

Q Did you hear anyone else do that?

A No, sir.

Trial Judge Advocate: You may have the witness.

Defense: I have no questions at this time, if it please the Court. I may have some questions after the record has been made available to me.

Law Member: Your rights will be preserved as to this witness.

Trial Judge Advocate: All right. Now, I do feel if Counsel has any questions that pertain to any matters other than the record, now is the proper time to ask those questions. If they do pertain to matters of the record that, of course, is something else. In other words, I don't think that Counsel, by calling for the record can just sit back and not cross-examine a witness until all of the witnesses have testified on matters that have no connection with the record, because if that is going to be his purpose I am going to ask the Court to recess until tomorrow morning and we produce the record.

Defense: You always have the right, if the Court please, have the right to call a witness for recross-examination.

Law Member: There is no question you have the right to call for recross-examination, but you haven't examined him at all. I think that the Trial Judge Advocate's position is well taken. However, that is a matter for the Court. Subject to objection by any member of the Court, a recess will be taken until tomorrow morning at 9:00 at which time Colonel Jaworski will have the record here.

President: Any objections? If not, the Court will recess until 9:00 tomorrow morning.

The Court thereupon recessed at 4:00 p.m., 1 December 1944, to reconvene at 9:00 a.m., 2 December 1944.

LEON JAWORSKI
Lt. Colonel, J.A.G.D.
Trial Judge Advocate

Fort Lawton Staging Area,
Fort Lawton, Washington,
2 December 1944

The Court reconvened at 9:00 a.m., 2 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show that each accused is present, that the personnel of the Court present at adjournment are present this morning, and that the personnel representing the accused are present as well as the personnel of the prosecution.

The reporter was also present.

Trial Judge Advocate: Is the Court ready for the first witness?

President: Yes.

Law Member: Did we have a witness on the stand?

Trial Judge Advocate: Well, there was a statement called for and I can't get that statement before the Court without putting the witness on the stand.

Law Member: I think you can. He has asked you to produce it in Court.

Trial Judge Advocate: That is what I am doing, but there is no way the statement can be identified without a witness on the stand.

Major Robert H. Manchester, Transportation Corps, a witness for the prosecution, was recalled and testified further, as follows:

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Major, you are reminded you are still under oath.

A Yes, sir.

Q Major Manchester, at the time of the interview of Samuel Snow state whether or not a transcript was made of his testimony.

A There was.

Q Did you have any interviews with Samuel Snow that were not transcribed?

A I did.

Q Will you tell the Court what the facts were about that, please?
A Relating the conversation, sir?

Q Well, relating what interviews or interview were transcribed and which ones were not, and the reasons for the absence of a transcription if there was none of some of the interviews.

A Very well, sir. I had the one interview with Private Samuel Snow which I related yesterday and took place at the stockade. That was not transcribed. I had an interview with Private Samuel Snow on the night or the early evening of September 8, 1944, in our offices in the Intelligence Division. The interview was the result of a request of Samuel Snow that I come down or he be brought down and talk to me in order to change a previous statement that he had given.

Law Member: Neither one of those were transcribed, is that correct, which you have just related?

The Witness: The one on the evening was not transcribed, nor the one in the stockade.

Law Member: Well, the two you have just mentioned were not transcribed?

The Witness: Yes, sir, that's right.

Q Are you acquainted with the interview of Samuel Snow that was transcribed?

A I am, yes, sir.

Q Now, of course, these questions are addressed, Major Manchester, to interviews that you had or that you were in charge of; we are not speaking of any interviews that Colonel Williams conducted. I'm merely explaining that to you so you will know what these questions have reference to.

A They are the ones I am referring to.

Q All right. I will ask you (to reporter) to mark this as --

Law Member: (Interrupting) 38.

Trial Judge Advocate: Well, if the Court please, of course I did not intend to offer this in evidence. I am merely producing it. I want the witness to identify it and then it will be produced so the Counsel can see it. That is as far as I am going with it.

Law Member: This then is marked not as an exhibit for identification; it is to identify the document requested by Major Beeks at yesterday afternoon's session.

Defense: Why is it necessary to mark it at all. Just

confuses the record. I just asked it to be produced to have an opportunity to look at it.

Law Member: I don't think it has to be marked.

Q All right. Will you look at this instrument I am handing to you and tell the Court whether or not that is a transcript of the proceedings that transpired at the interview that you have just told the Court about.

A Yes, sir, that is a correct transcript of the statement.

Law Member: What is the date on that?

Trial Judge Advocate: Yes. It is dated 9 September 1944.

Q Now, will you tell the Court, please, Major Manchester, if there was any interview prior to this one at which a stenographer was present?

A There was.

Q Do you or not know whether that particular interview was written up -- was transcribed?

A I don't know whether it was or not, sir. I recall several cases where two statements or three statements had been taken. I was asked by the stenographer whether it was necessary to write the first ones or just to carry the last and final statement where there had been a contradiction. My recollection in this case is that I was asked by the stenographer; that I told her that the other statement was not necessary; it was a -- this was a contradiction --

Law Member: (Interrupting) Now, I want that to go out.

Trial Judge Advocate: He is explaining the reasons. You mean that there was a contradiction; that part of it?

Law Member: Whether that there was a contradiction. Don't say anything about that.

Q Let's see what the last part was, now.

Law Member: He has it in there he told the stenographer that it was not necessary to transcribe the prior conferences.

Q All right. Do you know whether any subsequent interview that you had with the accused Private Samuel Snow was transcribed or is this the only one?

A That is the only one I was present at, sir.

Trial Judge Advocate: All right. That is all

Defense: I have no further questions of Major Manchester. I will try to read this as we go along here.

Law Member: Well, I think that Major Manchester now is

Major Beeks' witness, isn't he?

Trial Judge Advocate: That is correct. In other words, I brought him for this purpose.

Defense: I don't construe that to be so at all.

Law Member: You were on cross-examination yesterday when you requested Colonel Kaworski to produce a certain document in Court. The testimony that has transpired this morning was for the sole purpose of identifying the document you requested.

Defense: Yes, but I only requested that document to enable me to cross-examine witnesses on their direct examination.

Law Member: But this present witness was on the stand at the time you asked for that.

Defense: I think that was probably so, and if the Court wants to rule he is my witness the Court is clearly in error on it.

Law Member: In any event, as I understood, you didn't have any questions?

Defense: No. I demanded the production of this document. It has been produced and I have no further questions of Major Manchester.

Trial Judge Advocate: Well, it is all right.

Q There was one thing I might ask you, Major Manchester, so it won't be necessary to call you back later. Do you or not recall having any conversation with Samuel Snow on the evening of September 8, I believe it was, relating to his confinement?

A This confinement was brought up and mentioned by him in the course of a conversation I had with him, which was not transcribed.

Law Member: I can't hear you.

The Witness: Pardon me, sir. I had a verbal conversation with Private Snow on the night of September 8, 1944, in which he made mention of his place of confinement.

Q And what was that conversation, Major?

A He stated that he did not like it where he was; referred to the fact that he was in solitary confinement.

Law Member: Will you read that, please?

(Answer read by reporter)

Q And what?

A I asked him under what conditions he was confined, his living conditions; whether he was on bread and water, and he said no,

that he was in a separate cell; that he would much rather be put with the other boys. He definitely used the word solitary confinement.

Q And had you at any time --

Defense: (Interrupting) What was that last answer?

Trial Judge Advocate: He said he definitely used the term solitary confinement.

Q Had you or not at any time had him placed in solitary confinement?

A I had never made such an order, sir. I ordered him placed in the guard house, if possible, or at least segregated from the rest of the accused.

Q And what was the purpose of having him segregated from the rest of the accused?

Defense: Oh, I think that was gone into yesterday, if the Court please.

Trial Judge Advocate: Well, this conversation came up and I think it would be well for the facts to be developed.

Law Member: You may continue.

A I wanted the accused Samuel Snow separated from the rest of the accused because I was not satisfied with the first story he told me and I did not want him in a position, if he was so inclined, to support or build up an alibi.

Q All right. Now you in using an expression a while ago said to the Court that he referred to the fact that he was in solitary confinement. You mean that was a fact or that was his claim.

Defense: Well, if the Court please, the going into these matters of solitary confinement, I think under the situation presented here it is a question of law and something for the Court to determine whether or not he was placed in solitary confinement. I think all the witness is entitled to do, as I think he has tried to do, is give the facts. It is for the Court to determine whether that amounts to solitary confinement within the meaning of the manual for courts-martial.

Law Member: That is correct; that is a fact to be determined by me, and I want all the evidence on it I can get.

Defense: Yes, but I think the use of the words solitary confinement is a legal conclusion.

Law Member: Do you concede for the record, Major Beeks, that during all the time these interviews took place between either Major Manchester or Colonel Williams and the accused that

he was in a regularly appointed cell in the guard house and not in solitary confinement within the meaning of the manual of courts-martial?

Defense: No, I don't so concede.

Law Member: Then the witness may answer.

Q Will you answer the question, please.

A May I have the question again, please?

Q You used the expression that the accused Samuel Snow referred to the fact that he was in solitary confinement. I want you to explain to the Court what you mean by that expression. Do you mean that that was his statement to you, or do you mean that it is a fact that he was in solitary confinement?

A No, sir, that was his statement to me, and apparently a fact to him.

Q And do you recall the date that the accused Samuel Snow was released from the guard house and placed in either the compound or the stockade? Do you recall approximately when that was?

A It was shortly after. I am certain not more than two days after the taking of the statement which you have just shown me.

Law Member: That is the statement of September 9th?

The Witness: Yes, sir.

Q To your knowledge was he ever again taken out of the stockade or the compound and placed in the guard house?

A Not to my knowledge, sir. I have no recollection of it.

Law Member: I would like to ask one question.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Major Manchester, did you ever in words or substance state to the accused Samuel Snow that if he did make a statement satisfactory to you you would send him back to the guard house or to the compound with the other boys?

A I did not, sir.

Q Did anybody else within your knowledge?

A Not to my knowledge, nor in my presence, sir.

Q You are sure of that?

A I am absolutely certain of it.

Law Member: That is all I have.

President: Any questions? That is all, then. The witness may be excused.

Defense: If the Court please, I understand Major Manchester is coming down with the flu. It is quite agreeable with the defense if he wants to be excused and the prosecution sees fit.

Law Member: Who is coming down with the flu?

, Defense: Major Manchester mentioned to me in the hall that he was and wanted to know if he could be excused. As far as I am concerned, it is satisfactory.

Trial Judge Advocate: Let me ask him about another matter then. Now, with the Court's permission, I am going into a matter that is separate from this particular accused but it is a matter I am going to have to prove, expect to prove by Major Manchester, and may get to today and probably would get to today.

Law Member: This does not pertain to the collateral issue that has now been gone into?

Trial Judge Advocate: No, sir.

Law Member: Does this pertain to another similar one?

Trial Judge Advocate: It pertains to a matter of an admission of one of the other accused, of another accused.

Law Member: Well, I think we can arrange that all right.

Trial Judge Advocate: All right, sir.

Law Member: I think to be correct on that, that order of testimony in such an instance is a matter for the Court and not for the Law Member.

Trial Judge Advocate: I think that's right. It is matter that is discretionary with the Court.

Law Member: So I will grant permission to the Trial Judge Advocate to go into this matter due to the Witness' sickness and expectation of leaving the court room at this time after he is finished on the witness stand, subject to the objection of any other member of the Court. It is understood that this testimony which is now being elicited is not on the question of the admissibility of the Snow statement.

Trial Judge Advocate: That is correct, sir.

President: Are there any objections? There appears to be none.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Major Manchester, in the course of your investigation, as you have testified to the Court, did you or not ever have

occasion to talk with the accused Herman Johnson?

A I did.

Q Now, state whether or not that conversation related to the identification of some instrument.

A It did.

Q In the course of that conversation state what occurred with respect to the identification of that instrument.

A I showed the accused, Herman Johnson, a trench shovel or trenching tool. It bore an initial and a portion of a serial number. I recall that it was J 1145 or 46, something like that. I asked him if that was his shovel. He stated that it was. I told him that it had been found in the Italian area immediately after the riot or fight. He stated that he understood that it had. I asked him if he had left or lost the shovel there. He stated that he had not; that he had never been in the Italian area. I asked him where he was during the time of the fight or the riot. He stated that he was in his barracks pressing clothes; that the shovel was left on his bed in preparation to packing; that after pressing his clothes and sometime after the fight he discovered that the tool had been stolen or taken by someone from his bunk. I asked him if he had any knowledge as to who might have taken it. He stated that he did not.

Q Did you in the course of that conversation ask him to identify a trenching tool that was found in that area?

A Yes, sir. I showed him the trenching tool.

Q And did he not identify it as his?

A He did, yes, sir.

Q All right. Now, I wish you would look at this instrument I am passing to you here and tell the Court what it is.

A Sir, that appears to be the same tool. It carries the number that I recall. I have placed no identification marks on it. I can only identify it as it appears to be the same tool.

Defense: What was your last answer?

(Answer read by reporter.)

Q Does it bear any numbers or identifying marks on it from which you can tell whether or not it is the one?

A Yes, sir. In two places on the blade and one place on the handle -- two places on the handle. It bears the initial "J" and the numerals "1145".

Q Did you or not have any talk with the accused Herman Johnson as to that initial and as to those numbers?

A I did, yes, sir.

Q Tell the Court about that, please.

A He stated those were a portion of his serial number; the "J" would represent Johnson. I don't believe he said it in these words. He said he recalled that his number, part of his serial number and the initial of his last name were on the shovel.

Trial Judge Advocate: Have you seen that (indicating shovel)?

Defense: Yes.

Trial Judge Advocate: The prosecution offers this in evidence.

Defense: No objection.

Law Member: It will be Prosecution Exhibit 38.

Trial Judge Advocate: That is all. The prosecution has no further questions on this matter.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Can you give me, Major, an approximate date this conversation took place?

A Sir, I would say approximately the 16th or 17th of August, 1944.

Q And can you tell me where it took place?

A It took place in an interview room in our office in the Goodrich Building at the Seattle Port of Embarkation.

Questions by President:

Q, Major, in what manner did this shovel come into your possession?

A The shovel was turned over to me by Sergeant Young.

Law Member: The tool is received in evidence as Prosecution Exhibit No. 38.

RECROSS-EXAMINATION

Questions by Defense:

Q Major Manchester, the only personal knowledge you have with respect to Prosecution Exhibit 38 is that it is a trench tool that you had conversation with the accused Johnson in your office about?

A Yes, sir, just as I have related.

Q You have no personal knowledge that it was found in the Italian area?

A No, sir, I wasn't down there at the time of the fight.

Defense: That is all.

Trial Judge Advocate: I may say to the Court, of course, this witness was put on out of order and testified as to testimony expected to be produced.

Law Member: That is clearly understood.

Defense: Yes, I understand.

President: Any further questions? If not, the witness will be excused.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: Major Beeks, I believe Sergeant Young was on the stand yesterday afternoon and you had asked for the statement.

Defense: Oh, I don't think I will question Sergeant Young.

Law Member: Just a minute. No further cross-examination of Sergeant Young?

Defense: No, sir.

President: Does the Court have any questions they desire to ask Sergeant Young based on the testimony? There appears to be no questions by the Court.

F. J. Freeman, a witness for the prosecution, was recalled and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Your initials, Mr. Freeman, are what?

A F. J.

Q You have been sworn as a witness before and you are reminded that you are still under oath. Mr. Freeman, in connection with the investigation in which you participated of the incident that occurred at Fort Lawton, where some Negro soldiers entered the Italian area, did you or not have occasion to be present at the interview of the accused Private Samuel Snow?

A I did.

Q Did you or not in the course of that interview at any time say to the accused Samuel Snow that you were going to lay the murder rap on him?

A I did not.

Q Did you at any time say any words to that effect to the accused Samuel Snow?

A No, sir.

Q Did you at any time say to the accused Samuel Snow that he would never see his mother and father again?

A I did not.

Q Did you ever say anything of that nature or a statement of a similar type?

A No, sir.

Q Did you or not at any time state that the accused Samuel Snow was to be placed in solitary confinement?

A I did not. I had no authority.

Q State to the Court whether or not you at any time saw Sergeant Young or heard Sergeant Young, rather, say to the accused Samuel Snow that he had a good mind to sock him if he didn't tell the truth?

A I did not.

Q Did you at any time see Sergeant Young remove his coat in the presence of the accused Samuel Snow and make any sort of a gesture or statement to him that was connected with the removal of his coat?

A No, sir.

Q Without reading this entire instrument I am going to pass to you just for the purpose of having you tell the Court whether or not the events that are mentioned in it occurred in your presence, I would like for you to look at that instrument.

Defense: Well, if the Court, please, this instrument isn't marked, it isn't in evidence. Unless it is necessary for this witness to refresh his recollection of anything that transpired down there, I don't think it is proper for Counsel to give it to the witness to read.

Law Member: I think possibly, Colonel, and you well know my attitude on the prior Exhibit 36, I think it would be well for you to find out from this witness whether or not he can testify and answer your questions without refreshing his recollection.

Trial Judge Advocate: Well, all right, sir. Of course, this was just for the purpose of having him state whether or not he was present when those matters there transcribed occurred. See, it is pretty hard to get into that any other way.

Law Member: Any other way he can answer that question by asking a direct question whether or not he was present?

Trial Judge Advocate: Couldn't possibly, Colonel, because he doesn't know what is transcribed. He has to first see what

is transcribed on there for him to say whether or not he was present during the entire time that occurred.

Defense: Well, there must be some reason. I think the exhibit ought to be marked. I didn't know Counsel was going into this exhibit when I made the remark.

Law Member: I don't know whether we should offer it as an exhibit, though.

Defense: Well, there will probably be some reference to it. I will probably make some reference on cross-examination.

Law Member: Well, when you make the reference you will have to refer to it as an alleged transcription of testimony alleged to have been taken.

Defense: It is not an alleged transcription at this time. Major Manchester has testified it was the transcription.

Law Member: Now, what is your objection, Major?

Defense: Well, I said I originally didn't think it was proper for this witness to examine this document at this time unless it is necessary for him to do so to refresh his recollection,

which he hasn't so testified. I don't know whether Counsel intends to ask him about it, but if Counsel intends to go into something about the exhibit, I think probably it should be marked.

Law Member: Well, if you intend on going into it further only to establish by this witness he was present at the time the events there transcribed occurred, then Counsel can cross-examine him all he wants to on any phase. Mr. Freeman, can you tell the Court whether or not on some date you were present at the time the accused Snow was questioned and at which time the questioning was taken down in shorthand by some stenographer?

The Witness: Yes, sir.

Law Member: Do you know of your own knowledge that you were present?

The Witness: That's right.

Law Member: Have you any recollection of what date that was off hand?

The Witness: Somewhere in the first part of September. I couldn't say the exact date; 7th, 8th -- 6th, 7th, 8th, somewhere along in there.

Law Member: Can you tell us without looking at this document who was present at those conferences?

The Witness: No, sir, I couldn't be sure of all of them.

Law Member: If you looked at that document which you now have in your hand, but have not examined, could you tell who was present at those conferences?

The Witness: Yes, sir, I think so.

Defense: If the Court please, I will withdraw my objection to speed things up. Let the witness look at it.

Law Member: Let us proceed. Where were we?

Q Go ahead and examine that, Mr. Freeman.

A (Witness examines paper handed him by Trial Judge Advocate.)

Q All right. Now, Mr. Freeman, you have just completed examining this instrument dated September 9, 1944. Will you tell the Court whether or not the matters that are reported in this instrument truly reflect the proceedings that took place at that interview?

A Yes, sir.

Q Will you tell the Court whether or not you were present during the entire time?

A I was.

Trial Judge Advocate: The prosecution has no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Mr. Freeman, during the interview of September 9, what explanation, if any, was made to Snow of his rights under the 24th Article of War and by whom?

A Major Manchester referred to them and explained them to him. He said he understood the 24th Article of War, and it was elaborated on by explaining his not having to make any statement or refuse to answer any question, words to that effect. That possibly isn't exactly it.

Q Was the 24th Article of War read to him at that time?

A No, sir.

Q It wasn't read to him?

A No, sir.

Q It was explained?

A It was explained, but I don't think it was read to him at that time.

Q Was this the first time Snow had ever been examined?

Law Member: Snow had ever been what?

Defense: Examined.

A No, talked one time previously, that is, for a statement.

Q Did anybody else that day make any explanation to Snow what his rights were as a witness under the 24th Article of War or otherwise?

A On that particular --

Q I am speaking now of the 9th of September?

A I don't recall.

Q You don't recall?

A No, sir.

Q In the transcript which you have just read there isn't a single thing, is there, about any explanation to Snow of his rights under the 24th Article of War; as to whether he knows his rights or understood them; and the 24th Article of war is not even mentioned in the entire transcript, is it?

A No, sir, not in this one.

Law Member: What is the date of that?

Trial Judge Advocate: That is the 9th of September, Colonel.

Q There is not one single thing in there in which Snow is asked if he knows his rights or understands his rights or anything of that character whatsoever, is there?

A As far as I have read.

Q Any doubt in your mind about it?

A No, I don't think there is.

Defense: No. That is all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q When did this explanation take place? Prior to the time that the statement was taken, or after the time the statement was taken, or at what point in the proceedings did that explanation you mentioned to Major Beeks take place?

A When he was first brought into the investigating room.

Q Was that or not prior to the time that the stenographer started to recording any proceedings?

A Yes, sir.

Trial Judge Advocate: That is all.

Law Member: Is there any mention made in that document of the 24th Article of War?

Trial Judge Advocate: We will stipulate there isn't, your Honor, there isn't I don't think; I don't see it.

Law Member: It doesn't appear in this document as it did in 36?

Trial Judge Advocate: No, sir. This, as was explained, was a second statement. Would the Law Member like to see how it starts out without reading any of the evidence itself. I think it might be helpful.

Law Member: Well, I will just look at the part you tell me pertains to the 24th Article of War.

Trial Judge Advocate: Well, there isn't anything; in fact I have stipulated there is nothing in here that makes any reference to that. But this is the second statement, as Major Manchester explains. He had previously interviewed him, and the forepart of it, I believe, would be helpful to show an explanation of why there isn't.

Law Member: Well, the Law Member will look at the forepart of the document. All right. Will you look at that paper, Mr. Freeman, and read the first question and the first answer.

The Witness: Read it?

Law Member: Yes.

The Witness: (Reading) Question: On the 6th day of September, 1944, you were in this office and at that time a formal statement was taken from you, is that correct?
Answer: Yes, sir."

Law Member: That is all.

Defense: Now, in view of the fact the Law Member had those sentences read into the record, I am at this time going to demand that statement and all the stenographic notes of what took place on September 6.

Trial Judge Advocate: Well, we will be glad to develop the proof as to that. You must remember Major Manchester has testified that it was his recollection that he said, in view of the fact the accused Snow came up and said he wanted to give a different statement, that he said that the other notes should not be transcribed. Now, I have the stenographer here; I propose to put her on the stand. If the notes were transcribed you may be sure that they will be produced, just as everything else that you have called for I have tried to produce that I thought that you were entitled to -- and perhaps a thing or two I didn't think you were entitled to.

Law Member: At the present time it seems as though your request is impossible to comply with. If it wasn't transcribed, the Trial Judge Advocate certainly can't produce it.

Defense: Well, My main purpose in wanting to see it, I don't know what took place there, but I do know with reference to other statements here there is testimony that after every recess and at every session the witness was warned of this rights, and here is a whole session in which he wasn't warned of his rights; it doesn't appear in the record.

Law Member: It definitely appears in my mind, Major, there wasn't any warning whatever as to this accused's rights under the 24th Article of War in the transcript which this witness has examined.

Trial Judge Advocate: And I know Counsel didn't mean to make an inaccurate statement; but actually in the other exhibit that was offered, after the recess there was absolutely nothing in there to indicate that there was again a warning given insofar as the transcript is closed.

Defense: I certainly agree with you there, Counsel.

Trial Judge Advocate: That's right, but you said it always showed in the others.

Defense: Now, I didn't say that. I said the testimony showed after every recess --

Trial Judge Advocate: And the testimony is the same.

Law Member: Let's not bicker. He asked the Trial Judge Advocate to produce a document evidently not in existence at this time; at least the evidence shows it is not in existence. Any other questions?

Defense: No, I have no further questions.

Trial Judge Advocate: No further questions by the prosecution.

President: Any by the Court? There appears to be none. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: I want to again mention as this proceeding progresses that while I have not objected to Counsel going into side issues and collateral matters, because there seems to be a wide latitude for the purpose of testing the memory of a witness, still there is absolutely nothing before the Court relating to any offer of any statement other than the one written statement that was taken some time in the latter

part of September, 1944. In other words, we made no attempt to offer any other statement; it is just the written statement made in the accused's own handwriting that has been offered.

Law Member: What is the date of the statement that has been offered?

Trial Judge Advocate: Sir, it is not dated, but I believe the testimony shows that it was during the last week in September, or the latter part of September, 1944, when that statement was taken or, rather, when the statement was written. I just wanted to make that observation because I wanted my position clear before the Court on that.

Lu M. Henderson, a witness for the prosecution, again took the witness stand and testified further, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Mrs. Henderson, you have testified before and you are reminded you are still under oath.

A Yes, sir.

Q Were you present, Mrs. Henderson, serving as stenographer when the accused Samuel Snow was interviewed in connection with the Fort Lawton riot matter?

A Yes, I was.

Q Do you recall whether or not more than one statement was taken from the accused Private Samuel Snow?

A There was more.

Q Do you have any recollection of what, if anything, transpired as to your instructions to transcribing the first interview that was had of the accused Private Samuel Snow?

A The first statement that I took --

Q Speak out loud so they can all hear.

A The first statement that I took I was told that it wasn't necessary to write it up; that it wasn't important.

Q That it wasn't necessary to write it up and it wasn't important?

A Yes, sir.

Q Thereupon do you recall whether or not you wrote it up?

A I don't remember whether it had been written up when I was told he didn't want it.

Q Now, had you or not received instructions of that nature in other instances also, or was it only in the instance of Samuel Snow?

A No, sir, I received those instructions on several statements

that they didn't want.

- Q All right. Now have you at our request made a check of you notes and notebooks to see if you could find any record of the first interview of Samuel Snow that you had no recollection of having written up?
- A I looked for it and I don't have the notes on the first statement. I have on the second.
- Q You do have them on the second?
- A Yes, sir. I threw away the notes they didn't want; I destroyed them.
- Q Now, Mrs. Henderson, as I understand your testimony you were present at both interviews?
- A Yes, sir.
- Q Do you recall approximately what length of time elapsed between the first and the second interview?
- A No, but it was just a day or two.
- Q All right. Now, when an interview would take place would you transcribe the notes very promptly or would there sometimes be a lapse of a few days? What was your practice on that?
- A Well, some of the statement we took they wanted immediately and I transcribed immediately; others weren't written up until two or three weeks after I took them.
- Q I see. Now, while you were present at these interviews, Mrs. Henderson, did you or not at any time hear Sergeant Young say to the accused Samuel Snow that he had a good mind to sock him if he didn't tell the truth?
- A I never heard Sergeant Young threaten any of them.
- Q Did you or not at any time hear Mr. Freeman say to the accused Samuel Snow that he was going to lay the murder rap on him?
- A No, I didn't hear him say that.
- Q Did you or not hear Mr. Freeman or anyone else say to the accused Samuel Snow at any time that he would never see his mother and father again?
- A Not that I can remember.
- Q State whether or not you were positive or uncertain as to whether any such conversation ever took place in your presence?
- A I never heard any threats made.
- Q Now, Mrs. Henderson, I will ask you to look at this instrument which is dated the 9th of September, 1944, and tell the Court whether or not that is a transcript of the interview that you testified about.
- A (Witness inspects papers handed to her by the Trial Judge Advocate.) Yes, sir.

Trial Judge Advocate: The prosecution has no further

questions, if the Court please.

CROSS-EXAMINATION

Questions by Defense:

Q On September 9th, Mrs. Henderson, that was the second time, as I understand it, that Snow had been brought in for questioning?

A Yes, sir.

Q Were you present in the office at the time he was brought in for questioning?

A The second time?

Q Yes.

A Yes, sir.

Q You were present at that time?

A Yes, sir.

Q When he was brought in?

A Yes, sir.

Q At that time -- I am speaking now of the second time on September 9th -- was any explanation of Snow's rights under the 24th Article of War or otherwise given to him?

A I can't remember that particular one. I mean, I couldn't remember any particular ones. The only thing I can tell you is --

Trial Judge Advocate: I am afraid members of the Court can't hear you.

The Witness: I am sorry.

A I can't remember any particular person. I do know they warned all.

Q Well, he had been warned the previous day.

A Well, I don't know whether the day before --

Q Well, the first one; let's call it that.

A The same method was used on all of them; it was routine.

Q This was the second time he was in there.

A When they brought them back for second statements, and there was several brought back for the second time, they would tell them, ask -- in fact, I remember them asking them -- if they wanted the 24th Article of War read again. I don't know whether Snow was one or not.

Q Well, if that question were asked the second time you would have some reference to the 24th Article of War?

A Not necessarily. Maybe I started taking down the actual testimony. Some of these we wrote up both statements; on

others he said forget the first statement and we will just take the second.

Q It was your practice as a general rule never to put anything about the 24th Article of War into the statements?

A No, that isn't true. On our first statement we always put in about the 24th Article of War.

Q Will you look at that to refresh your recollection.

A On our first statement we always wrote in the 24th Article of War; on the second one we headed them up second statement and we didn't put in that preliminary. See, we didn't have much time; we were pressed, working until midnight and 1000 on these things, and Major Manchester cut them down as much as possible.

Q You eliminated what you considered the most unimportant parts?

A Not what I considered, no.

Defense: Well, that is all.

Trial Judge Advocate: I have no further questions.

President: Any questions by the Court? If not, the witness may be excused.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: Counsel, and it does come at a convenient time, had asked if the recess would come pretty soon; and it would also for me be a pretty good time. I want to put another witness on the stand and I don't know whether he is out here and I will have to check.

Law Member: One more on this issue?

Trial Judge Advocate: I think so. I think that is all that is available, if it please the Court.

President: We have only been in session an hour, but the Court will take a fifteen minute recess.

The Court thereupon recessed at 10:05 o'clock a.m., and reconvened at 10:35 o'clock a.m., 2 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready to proceed, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

Trial Judge Advocate: If the Court please, I would like to call Captain Yarnall to the stand for just some brief testimony. Now, Captain Yarnall has been in charge of the guard here but the testimony that he is to give I feel is of such a nature that by his being in the court room he hasn't been influenced. It doesn't relate to any conversations with any of the accused. It is purely a matter of his testifying to the description of some physical facts and that is all. I don't mind telling you what it relates to.

Defense: The defense offers no objection, if the Court please, if the testimony is confined to a description of physical facts.

Captain Ray A. Yarnall, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Have a seat, please, Captain. State your name, your rank, your assignment and your station, please.

A Ray A. Yarnall, Captain, Prison Officer, Fort Lawton, Washington.

President: Just a minute. Will you show for the record who are present.

Trial Judge Advocate: Oh, I am very sorry, sir. Let the record show that upon resumption of the hearing that each of the accused is present, all members of the Court, personnel representing the accused and the personnel of the prosecution are present.

Q Captain, how long have you been Prison Officer at Fort Lawton?

A I was given that assignment on or about the 28th of August, 1944.

Q And what was your assignment prior to that time?

A Prior to that time I was assigned to Camp George Jordan, Seattle, Washington, as Provost Marshal -- Police and Prison Officer.

Q For how long a period of time have you had familiarity with the physical setup of the guard house at Fort Lawton?

Defense: I will stipulate with you, Counsel, he is familiar with it.

Trial Judge Advocate: That he was familiar with it as it was on August 14, 1944, and thereafter?

Law Member: What was the date he came to Lawton?

14. Defense: Well, I can't stipulate he was familiar on August
I don't know.

Law Member: When did you come to Lawton?

The Witness: December 7, 1941 -- December 17, 1941.

Law Member: And have you been at Lawton ever since?

The Witness: No, sir.

Law Member: When did you come back the last time; I mean, you just gave the date assometime in August.

The Witness: That was the date I came back as Prison Officer. I returned to Lawton on August 22, 1944.

Q And you resumed and you took over your duties as Prison Officer in August, 1944. What date did you give, Captain?

A Yes, I took the assignment I previously had. The 28th of August, 1944.

Q Now, you spoke of the assignment you previously had. What other time did you have the assignment, the same assignment?

A I had been Prison Officer at Fort Lawton from about January, 1942, until October, 1942.

Q I see. Now, Captain Yarnall, do you have any solitary confinement cells at the guard house at Fort Lawton?

Defense: If the Court please, I am going to object to that question. It contains solitary confinement, which is the legal question that the Court is going to have to determine.

Law Member: But, Major, I am interested in knowing this, --

Defense: Well, --

Law Member: Just a minute.

Defense: I am sorry, sir.

Law Member: That is the term that the accused used.

Trial Judge Advocate: That is it exactly.

Law Member: Don't you see?

Defense: Yes.

Law Member: He has inferred by testimony here that it was solitary confinement imposed upon him.

Defense: I understand that.

Law Member: From the time that he came out of the hospital

until some time early in September.

Defense: I understand that, and that is what he construes solitary confinement to be. Now, this Court must determine from the description of the facts by witnesses of what this is whether or not that was solitary confinement.

Law Member: That is definitely what I hope to obtain from this witness, and I am most desirous of obtaining it.

Defense: But for Counsel to ask the question of whether there are solitary cells calls for a legal conclusion on the part of this witness that it is for this Court to determine.

Law Member: Now, Major, in the manual of courts-martial solitary confinement is rather well defined, and I want to know where within the meaning of solitary confinement in the manual of courts-martial any such practice was imposed upon this accused. The present question is whether or not there is any solitary confinement cell at the prison or the guard house at Fort Lawton. Now, that is just a preliminary question as to whether or not there are any such cells where a man is kept by himself, given no bunk, on a bread and water diet, etc. That is all I am interested in at this time. Now, then, I hope to obtain from this Captain either by Counsel's questions or by my own as to just exactly what was done with the accused Snow while he was in the guard house.

Defense: Yes, and from the testimony at that time the Court determines whether or not he was placed in solitary confinement.

Law Member: Definitely; but I must determine that on the facts that I hear from the witness' mouth. Proceed.

Q Will you state whether or not there were any solitary confinement cells in the guard house at Fort Lawton, in that guard house at Fort Lawton, Captain.

A No, sir.

Law Member: Now, I understand what that means, Major.

Defense: Maybe you do, but I don't.

Trial Judge Advocate: We will try to help you further and see if you don't.

Q Now, will you describe to the Court what type of cells there are in the guard house at Fort Lawton, please sir.

A The cell block is composed of three sections. Two of the sections have bunks in them to accommodate approximately -- they are double bunks -- and will accommodate approximately sixteen prisoners per section. In addition there are three single cells which are separated by heavy mesh, heavy gauge mesh wire, and these three cells have the same accommodations that the other cells do with the exception that they are

separated from the two larger cells in the main cell block.

Q Go ahead, sir.

A The separation is by, as I say, by the heavy mesh screen and the cell, the single cell, is open on the front with bars, on the top with heavy wire mesh, and the two sides are solid.

Q Are or not each of those cells equipped with bunks?

A Yes, sir.

Q The prisoners that are confined in those cells are messed in what way, please?

A I beg your pardon?

Q How do you mess the prisoners that are confined in those cells?

A That depends upon the instructions that we had from the authority requesting confinement of those prisoners.

Q Do you know, Captain Yarnall, where the accused Private Samuel Snow was confined when he was at the guard house at Fort Lawton?

A He was confined in one of those single cells.

Q One of those cells you have just described to the Court?

A That is correct, sir.

Q Well, yes. And do you know whether or not the accused Private Samuel Snow was given meals during the time of his confinement there?

A He was given the regular Quartermaster meals that were issued to all prisoners on his confinement there.

Defense: No issue on that, as I understand.

Q Did you describe or not, I am not quite sure whether you did, the ventilation of those cells?

A Only in that I gave a description of the front of the cell and the top of the cell both being open, only closed by bars and heavy wire mesh.

Q I see. All right, thank you, Captain.

Trial Judge Advocate: No further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Army regulations do contemplate confining men in solitary confinement under certain circumstances, don't they?

A Yes, sir.

Q Now, isn't it a fact that when men are so confined they are placed in one of those cells in the guard house at Fort Lawton?

A May I answer that question with information too?

Q Yes.

A Yes, sir, you are correct on that inasmuch as the solitary confinement of the man placed -- that we have no other cells which would suit the purpose, and solitary confinement being placed upon a man is accompanied by restricted diet.

Defense: That is all.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Any windows in the cells, Captain?

A In the single cell?

Q Yes.

A No, there are no windows in the single cell, sir. They are in a large room itself, the same as they are situated now. These are windows adjacent to those three cells on the side of the guard house proper, which are barred, and if I remember correctly, there are two large windows there which would be a distance of approximately three and a half to four feet from the door of the cell itself.

Q So that the windows on the side of the large room in which these cells are located, the light from those windows can get into these cells that you have described?

A Yes, sir. In fact, there is more light there than there is on the other side of the building because the cells themselves are actually closer to the window at that point than the large cell.

Q Any electric lights in these cells?

A No, sir.

Q Any electric lights in the other cells?

A There are electric lights above the main cell block itself and the wire mesh is the only thing that would diffuse the light from entering these cells at night.

Q And is that the same as the three special cells you have told us about; does the light from the large room come down through a mesh ceiling?

A Yes, sir, the light goes through that mesh wire at night.

Questions by President:

Q As I understand it, the cell block is in a large room?

A Yes, sir.

Q Does a passageway run all around that room between the -- well, wait a minute. You described three cells?

A Yes, sir.

Q Or three compartments. Are those three compartments placed against any of the walls of the large room?

A No, sir, they are placed -- the rear of the cell is placed against the side of the large cell block itself.

Q In other words, the cell block is built in the center of the room and there is a passageway all around the outside of the cells?

A That is almost true, sir. It is almost all the way around. There is a heavy wire mesh partition in the back separating off these three cells and a heavy wire partition near the front of the cell in this passageway, which has a door by which we can keep people or prisoners, I should say, from going into there. However, it would not stop them from conversing at any time with those men.

Q What kind of a cot is in the small cell block?

A Regular wall cot, sir. The kind that is attached right on the wall itself. It is not a regular Quartermaster issue bunk that we do use in the other cells.

Q Is there a mattress on this bed?

A There is. The only time, if I may explain, the only time that there would not be a mattress or covers or anything like that in the special cells would be upon the orders of the officer confining the man, and then that would be complied with upon the okay of the commanding officer of the post.

Q In this specific case, the case of Private Snow, you were Prison Officer while he was confined there, is that correct?

A That is correct, sir.

Q Was he deprived of bedding?

A No, sir.

Q At any time?

A No, sir.

Q Were other prisoners permitted to talk to him?

A No, sir, they were not permitted to talk to him.

Questions by Law Member:

Q Were these three cells close together?

A They are adjoining each other. Yes, sir.

Q A solid wall or bars between them?

A There is a solid wall between them.

Q Anything to stop anyone, anyone in one of these three cells, from talking to any other co-prisoner in one of the adjoining cells?

A No, sir, there isn't; in fact, they can reach out from the bars of one cell and reach down into another cell and pass anything they might want to pass, providing the other two cells were occupied.

Q Were you there at the time Snow entered?

A I don't remember if I was right in the office or not at the time he entered.

Q Did you receive any instructions pertaining to his confinement that required his bedding be taken away from him?

A No, sir, nothing like that.

Questions by President:

Q What instructions did you receive regarding his confinement?

Defense: If the Court please, I am going to object to this question, first, until it is determined whether or not the instructions were oral or in writing. If they were in writing, I think the writing would be the best evidence of what they were.

Law Member: That is correct. Ask him first.

Q Did you receive any written instructions as to the method of confinement of Private Snow?

A No written instructions, no, sir.

Q Did you receive any oral instructions?

A Yes, sir. It was a request rather than instructions.

Q Never mind. Were there other prisoners in the guard house who were connected with this case?

A At times, yes, sir.

Q At that time; while Snow was there?

A I don't recall exactly whether he was the only one right at that time or not -- the others there or not.

Questions by Law Member:

Q Can you, without referring to some record, tell me about when this was that Snow was confined?

A It was shortly after I arrived there, Colonel. I couldn't tell you the exact date, but I would say within about ten days after I arrived.

Q And without refreshing your recollection from any record can you give me an idea as to how long he was in there?

A Yes, sir; it was less than a week.

Law Member: That is all.

President: Any further questions?

Major Carpenter: I have one or two.

Questions by Major Carpenter:

Q In the case of Private Snow were his meals served in the cell

or was he taken out?

- A Private Snow's meals were served in the regular prisoner mess hall, which is located at the post stockade, and he was marched down there and fed there at that time and marched separately from the others and fed separately.

Questions by Law Member:

- Q But it was the same place where all the other prisoners ate.
A It was the same place and the same meal.

Questions by Major MacLennan:

- Q These three cells in the guard house, could they have been used in case you had a prisoner who was sent to you for solitary confinement -- these three cells have been used?
A Would they have been used?

- Q In other words, did you have any solitary confinement prisoners sent to you while you were at the guard house?

- A I have had requests from officers to put men in solitary confinement, Major. I have explained to them the situation that exists down there on the cells and told them that was the best I could do. It wasn't solitary confinement by any means. The only thing they could possibly do to have anything closely resembling that would be some other punishment, such as restricted diet. I have at times, yes, sir, I have at times put men in there under those conditions, with the sole knowledge of the officer confining him and knowing what the conditions were.

- Q The next question would be were any prisoners confined to either of those three cells who were not solitary confinement prisoners?

- A Many times, yes, sir.

- Q That was not an unusual practice?

- A No, sir, it was not.

Major MacLennan: Thank you.

Questions by President:

- Q Captain, who can order a man in solitary confinement?

- A The officer of the day; the Prison Officer has that authority, but he must report that to the Commanding Officer within twenty-four hours; and in the post also the Director of Intelligence and Security also has that authority; and the commanding officer.

- Q He must still report to the commanding officer?

- A Yes, sir, must be reported to the commanding officer within twenty-four hours. Any restriction of diet extending beyond that period of time must be ordered by the commanding officer of the post.

Questions by Law Member:

Q At any time during Snow's confinement was he on a restricted diet?

A No, sir, not to my knowledge.

President: Any further questions?

Trial Judge Advocate: No further questions.

President: The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Law Member: I would like to ask Counsel if on this particular document which has been offered in evidence, 37, whether or not it is in the record that Major Manchester initialled it and put a date after it?

Trial Judge Advocate: No date. It is in the record that he initialled it and that those are his initials.

Law Member: Is there any date?

Trial Judge Advocate: No, sir, but my recollection is that there is testimony as to the approximate date when it was taken. Is your recollection of a similar nature?

Defense: I will be honest. I don't have any recollection one way or the other.

President: A date was given but I don't have any idea what the date was.

Trial Judge Advocate: I think it came out in Colonel Williams' testimony.

Defense: I am asking Captain Noyd to refer to his notes.

Trial Judge Advocate: In the latter part of September was my recollection. Yes, latter part of September. Major Crocker and Captain Weller both say they have that.

Law Member: Any further evidence on this issue?

Trial Judge Advocate: The prosecution has no further evidence to offer on that issue.

Defense: The defense has nothing further at this time, sir.

Law Member: Have you an objection in the record, Major?

Defense: I don't recall whether I have or not.

Law Member: I don't believe so.

Defense: In the event that I have not heretofore made an objection, if the Court please, Defense at this time objects to the introduction of Prosecution Exhibit 37 for identification upon the ground and for the reasons, first, that the statement was not voluntarily obtained and, secondly, that there has been insufficient corroborating evidence as to the corpus delicti with respect to the witness Snow to make it proper for the Court to receive the exhibit into evidence.

Law Member: What was that last you said there?

Defense: The reporter can read it.

(Statement of Defense Counsel read as requested.)

Law Member: In other words, as to the witness Snow the corpus delicti has not been sufficiently established.

Trial Judge Advocate: May I comment on that last phase of it. This is Saturday. I have spent almost two weeks putting on testimony that a riot took place down at Fort Lawton on August 14, 1944. That is the corpus delicti as far as any of these accused are concerned:

Law Member: As to the confession, I do not understand that grounds for your objection, Major. You mean corpus delicti, the main corpus delicti, of this offense charged under the 89th Article of War?

Defense: Certainly there is evidence a riot took place here, but there is nothing here to indicate at this time that this accused Snow was a participant in that riot -- anything else whatsoever in this evidence -- other than the statement which they seem to want to put into evidence.

Law Member: You mean, Major, that there is not sufficient corroborating evidence in the entire record so that the Prosecution Exhibit 37 for identification could not be considered as evidence and that Snow could not be convicted upon that alone, is that correct?

Defense: In other words, pursuant to this section of the manual which reads, as follows: (Reading) "A court may not consider the confession of an accused as evidence against him unless there be in the record other evidence, either direct or circumstantial, that the offense charge has probably been committed; in other words, there must be evidence of the corpus delicti other than the confession itself."

Law Member: The section just read by Counsel says the court may not consider, and I construe that to mean the Court may not consider that on the main issue of guilt if the only evidence against accused is the matter contained in the confession.

Defense: That's right.

Law Member: Is that correct?

Defense: That is correct.

Law Member: So it is not material at this time as a grounds for objection.

Defense: Sir?

Law Member: The Court may not consider it if there is no other evidence in the record pertaining to the particular accused.

Defense: Snow; yes.

Law Member: I assure Counsel that the Court will at the proper time take that matter into consideration. But that is not on the issue as to whether or not the statement was made voluntarily or involuntarily.

Defense: Yes, but once this statement is admitted into evidence it is for the Court's consideration, and it never should be admitted into evidence until that further corroborating evidence has been established.

Trial Judge Advocate: May I comment on that just a moment. I am going to try to be helpful to the Court on that phase of it. With due deference to Counsel, and I know he won't construe my remarks as critical but just for the purpose of being helpful about the matter, there is confusion existing in Counsel's mind with respect to the meaning of the term corpus delicti in connection with the necessary proof in a case of this kind. This statement, and the Judge Advocate General has so held several times, that the corpus delicti must be established and an accused cannot be convicted on his uncorroborated confession simply means if I came into this Court and introduced forty-two confessions connecting every single one of these accused with this crime but hadn't established such a crime took place by independent evidence, then they could not be convicted on that uncorroborated proof. But that is all it means. Corpus delicti is not a matter of connecting the accused with the crime by something further than the confession, but the corpus delicti is to show such a crime took place and then the confession alone is sufficient because it has been corroborated by the corpus delicti. Now, in this case, of course, there has been an abundance of proof with respect to the fact that such a crime took place. That is the thing corroborates the confession. Now, if I had introduced the confession without any proof as to the riot having taken place, then it would be uncorroborated. In larceny cases, for instance, if I may take a moment, if a confession from an accused is introduced who has absolutely admitted that he stole the goods that he was charged with having taken but there is no showing that there was such a theft, in other words, that the owner lost or had taken from him those goods, of course, he can't be convicted because it hasn't been corroborated; but if there is proof that those goods were stolen and then there is a confession, although there is no further proof, it is sufficient because the corpus delicti has been established. I hope the Court will pardon me, and I know the Law Member understands that, but I do feel since the issue

has been raised it must be argued anyway and I should state the Prosecution's position.

Defense: What Counsel says is true, but in this case it must be considered as forty-two separate and independent law-suits against forty-two separate individuals and each case must be considered separately and apart from the others as to what the proof shows as to other men, and as to the accused Snow there is not one single corroborating bit of testimony in this record that he was a participant in this riot.

Trial Judge Advocate: You are mistaken about that. There is proof he was taken from that area.

Defense: No, proof he was picked up in the road, I think: not in the area.

Trial Judge Advocate: Well, that itself is a pertinent circumstance and I think the proof shows -- I can check it -- but I think it shows he was taken from the area. But I am not interested in that phase. Assuming there were that sort of proof, assuming nothing but his confession here and the establishment of the fact there was a riot, then it is sufficient.

Defense: If the Court Please, a man may have all the intentions in the world to commit a crime. Before ever committing that crime he may change his mind and withdraw. Other circumstances may come up which make it impossible for him to fulfill or carry out his original intent. Certainly you can't commit, send a man to prison or convict him, for what he thinks or intends to do.

Law Member: I don't believe there is any question but what the corpus delicti of the crime has been proven. The admissibility of this document depends upon a determination by me of an issue of fact as to whether or not this alleged statement in accused's own handwriting and written at a time when he was in a room by himself constitutes a voluntary act on the part of the accused. There is evidence by the accused that he was placed, in his own words, in solitary confinement. I believe that the preponderance of the evidence is to the effect that he was, in fact, placed in the regular guard house in a separate cell pending an additional investigation. By his own words this proposed document was written out by accused long afterwards. I believe he said at least a month. There also appears in the testimony a charge by the accused that he was threatened with bodily harm by Sergeant Young and that Sergeant Young took off his coat and said he was going to take a sock at him; also an alleged charge by accused that Freeman stated that he would hang the murder rap on him, or words to that effect, and somebody said unless he tells the truth he would never see his father and mother again. I believe the preponderance of the evidence proves that such statements and such acts did not take place.

I feel that it is proper and approved practice where there has been a crime committed by several persons for the authorities to keep the person separate during an initial investigation in

order to prevent the possibility of the joint defendants from formulating what might be a false alibi. I feel that it has been proven by a preponderance of the evidence that this act of writing out the statement was a voluntary act of the accused after he had been warned of his rights under the 24th Article of War and after he had been told that he didn't have to make a statement if he didn't want to, and after he had been told that if he did make a statement there was a chance that such statement might be used against him in some future proceeding.

Accordingly, I overrule the Defense objection and the document is admitted in evidence as Prosecution Exhibit 37. Now, then, I wish any names appearing in this document, any names of other accused, be deleted and the document is admitted in evidence against the accused Snow and cannot be construed or used against any other accused.

Trial Judge Advocate: Sir, I don't think there is any name mentioned in here that relates to any accused. I think it can be offered without any deletion.

Defense: I think that is correct.

Trial Judge Advocate: I will ask, however, that the photostatic copy be substituted for the original as has been done in other cases, and that there also be attached for the Court's convenience a typewritten copy.

Defense: Without in any way waving any objections made, the defense has no objection to the procedure.

Law Member: Oh, you object to the substitution?

Defense: No, I say not in any way waiving any previous objections I made to the exhibit.

Law Member: In other words, is there any question in your mind the photostatic copy and typewritten copy being furnished for the convenience of the Court are true and correct copies of the original in accused's own handwriting.

Defense: That's right. As a matter of fact, there isn't any reason why the original here, as far as prejudicial matter to the other accused is concerned, couldn't be admitted in evidence direct.

Trial Judge Advocate: Except possibly the typewritten copy might be easier to read.

Defense: I think so, and for that reason I am making no objection to the procedure.

Trial Judge Advocate: I ask that then be marked Prosecution Exhibit 37.

Prosecution Exhibit 37 was then marked and received in evidence, and was read to the Court by the Trial Judge Advocate.

Trial Judge Advocate: I think this witness can speak sufficient English to be interrogated in the English language. If he does not, I suggest that he say so and then it can be interpreted for his benefit. Will the Court so announce to him or let him know that he will be interrogated in English but he has a right to ask for an interpretation.

President: Can you speak and understand English?

The Witness: I try to.

Law Member: What was that answer?

Trial Judge Advocate: He will try to understand.

Law Member: Oh.

President: If you do not understand the question, do not try to answer it but ask to have it repeated in Italian.

The Witness: Yes, sir.

President: If we do not understand your answer we will do the same.

Corporal Major Enzo Antonelli, 28th Italian Quartermaster Service Company, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Did you understand the oath I just gave you?

A Yes, sir.

Law Member: Pull him up a little closer, please.

Trial Judge Advocate: Pull up a little closer, please.

Q State your name, please.

A Enzo Antonelli.

Q A-n-t-o-n-e-l-l-i?

A Yes, sir.

Q What is your given name?

A Enzo.

Q Enzo; E-n-z-o?

A Enzo.

Q Do you remember the incident when some Negro soldiers entered the Italian area on the night of August 14, 1944?

A Yes, sir.

Q In what barracks were you?

A 708.

President: Just a minute. I don't believe you had him sufficiently identified with reference to his organization.

Trial Judge Advocate: You are right, sir. I surely didn't.

Q What is your rank; your grade?

Defense: If you want to shorten it, announce to the Court what it was and I will admit that's right.

Law Member: Were you in the 28th Italian Service Company?

The Witness: Yes, sir.

Law Member: On the 14th of August?

The Witness: Yes, sir.

Law Member: And your barracks were 708?

The Witness: Yes, sir.

Law Member: And where are you now?

The Witness: Now?

Law Member: Yes.

The Witness: I am here.

Law Member: Correct. I mean where are you stationed now.

Q What is your present station; where are you stationed?

A At Mt. Rainier.

Q Now, what is your grade? I don't know what your grade is.

A Corporal Major.

Q All right. Now, on the night of August 14 were you or not in barracks 708?

A No.

Q Where were you?

A In the recreation room.

Q All right. Now, did you come to barracks 708 on the night of August 14?

A Yes.

Q About what time?

A I can't remember.

Q Do you have any idea as to what time it was?

A (Witness shakes head negatively.)

Q Well, were you in barracks 708 after the Negro left this area?

A Yes, sir.

Q Did you or not in barracks 708 find any sort of an instrument --

A Yes.

Q -- (continuing) that you had not seen there before?

A I find some shovel.

Q Shovel?

A Yes.

Q Well, will you look at this Prosecution Exhibit 38, at this instrument, and tell the Court whether that is what you have reference to?

A Yes, something like this. I find him.

Q You can't be sure that was the specific one that you found, can you?

A I can't be sure, but I am sure it was the same thing like this.

Q Like that. When you found it what did you do with it?

A Somebody, some big Sergeant, he say to me, "Give to me this".

Q Some big Sergeant said, "Give it to me"?

A Yes.

Q And did you give it to the big Sergeant?

A Yes, I give it to him.

Q You gave it to him?

A Yes.

Trial Judge Advocate: All right. Thank you; that's all.

Law Member: What is the number of the shovel; thirty-eight?

Assistant Trial Judge Advocate: Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have no questions.

There being no further questions, the witness was excused and withdrew.

T-4 Carl A. Johnson, Post Security Detachment, Fort Lawton, Washington, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Defense: I don't think this witness has to sit that far forward.

Trial Judge Advocate: No, he looks big and husky enough to talk loud. I'll ask you to speak very loudly so the members of the Court can hear you.

Questions by Trial Judge Advocate:

Q Sergeant, let's have your name, your grade, your organization and your station.

A Carl A. Johnson, T-4, 37217428, Post Security Detachment, Fort Lawton, Washington.

Q All right, let's keep your voice up, Sergeant, please. Do you recall the incident when on the evening of August 14, 1944, some Negro soldiers entered the Italian area at Fort Lawton?

A Yes, sir.

Q At that time, Sergeant, were you called upon to visit that area for the purpose of making some investigation?

A On August 15 I was called in.

Q About when on August 15 did you come to the area?

A About ten minutes to eight in the morning.

Q About ten minutes to eight in the morning. Now, while you were there at the area, Sergeant Johnson, did or not an Italian soldier hand you any instrument?

A Yes, sir.

Q Will you just tell the Court what transpired.

A I requested an Italian who could speak English to go with me in each one of the barracks occupied by the Italian soldiers and ask them if they picked up any articles that were apparently used by the colored soldiers the night before.

Defense: If the Court please --

Law Member: That may go out. "Apparently used by the Negro soldiers the night before" goes out.

Q Well, tell us, Sergeant, if at that time there was passed to you any instrument by an Italian soldier?

A Yes, sir, there was.

Q Will you tell the Court what type of instrument that was?

A It was a trench shovel with a serial number "J 1145" stamped on the spade.

Q I will ask you to examine this trench shovel, Prosecution Exhibit 38, and examine it carefully and tell the Court

whether or not that was the instrument that was handed to you by that Italian soldier.

A It is one exactly like it, bearing the same serial number and all.

Q Bearing the same serial number?

A Yes, sir.

Q Will you look at the various serial numbers and see if there is any change in any respect from the one that was handed to you.

A No, sir, no change.

Q Now, Sergeant, did Major Orem at any time pass to you a dogtag?

A Yes, sir.

Defense: Counsel, I will agree with you on one thing. The other witness said he gave it to a big Sergeant; he wasn't fooling.

Q This, of course, is some proof that has to be connected up in a different way, but this is just preliminary. I will ask you to look at this dogtag, which I will ask to be identified as Prosecution Exhibit 39 for identification, and ask you if this is the dogtag Major Orem handed you? Will you read the name on it and see.

A Yes, sir, this is the one; John L. Hamilton. I don't know whether this is exactly the one, but that is the same name.

Q Did it have the same name on it as this?

A Yes, sir, that's right.

Trial Judge Advocate: That is all, Sergeant.

Defense: No questions.

Law Member: Just a minute.

EXAMINATION BY THE COURT

Questions by Law Member:

Q I understand that Major Orem passed that dogtag on to you, is that right?

A. Yes, sir, for safekeeping.

Q And when was this, Sergeant; do you remember?

A It was the morning of the 15th of August.

Law Member: That is all.

There being no further questions, the witness was excused and withdrew.

Staff Sergeant Regis A. Callahan, Post Security Detachment,

Fort Lawton, Washington, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Please state your name, your grade, your organization and your station?

A My name is Regis A. Callahan, Staff Sergeant, Post Security Detachment, Fort Lawton.

Trial Judge Advocate: Did you gentlemen get that? Regis Callahan, Staff Sergeant, Post Security Office.

The Witness: Detachment

Trial Judge Advocate: Detachment at Fort Lawton.

Q Now, Sergeant, please raise your voice just like you would be shouting at one of your M.P.'s so each member of the Court can hear what you say. Do you recall the incident on the evening of August 14, 1944, when some Negro soldiers entered the Italian Area at Fort Lawton?

A I do.

Q Were you or not called upon to come to that area in connection with that incident that night?

A I was.

Q Now, Sergeant, after you got there did you have occasion to round up some Negro soldiers for the purpose of disbursing them and sending them back to their barracks?

A I did.

Q At that time will you tell the Court what you did in order to accomplish that?

A Well, when I arrived at the area there was a great number of Negroes running around among the trees and the various barracks. Pretty hard to tell what was going on, except there was a number of Italians who were being chased and apparently some of them were being subjugated to abuse.

Q So what measures did you take to terminate that situation?

A Referring to my personal measures?

Q Yes, your personal measures.

A When I first arrived on the scene down there in the 700 area it was immediately following the time that Sergeant Jones had been dispatched to the area with three men. I was interested in locating Sergeant Jones to find out what the situation was, and as I was walking down the area some colored soldiers came down through the grove to the rear of barracks 709 and 708 and one of them apparently had an ax or some kind of a large instrument to pry open the rear of 709 barracks, and I pushed

these soldiers off the step, drawing my revolver, and ordered them to disburse to their barracks and drop their clubs.

Q You say you did pull your revolver at that time?

A That's right, sir.

Q After pulling your revolver, Sergeant Callahan, were you then able or were you in a position to have the Negro soldiers leave the area, or what was done?

A Well, using the revolver as a threat, why, I gradually got them to drop their weapons and return to their barracks.

Q Now, Sergeant Callahan, did you or not enter the orderly room that night? You know the room I refer to as orderly room in that area. Did you or not enter it that night?

A Yes, I did.

Q While you were in the orderly room, did you or not observe someone pick something off the floor?

A While in the orderly room that night -- it was a little towards morning -- I observed one of the M.P.'s or some member, I can't be definitely sure now, some member in there rooting around among the debris who picked up a dogtag, and without noting the name I deliberately stuck out my hand for them to put the dogtag in and that dogtag I gave to Major Orem.

Q Was or not that the only dogtag you delivered to Major Orem?

A It was the only one I personally delivered to him.

Q And you don't know what became of that dogtag after you delivered it to Major Orem?

A No, sir.

Q Did you or not take any careful note of the dogtag before you delivered it to Major Orem?

A No, I didn't.

Trial Judge Advocate: The prosecution has no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Sergeant Callahan, were you in the guard house the night of August 14 at the time a call came in about the riot?

A Yes, sir.

Q Did you personally take the call?

A There were two calls on that night in regard to the riot.

Q Well, the first call that came in.

A The first call, as I understand, was received by Corporal David --

Trial Judge Advocate: Well, if you weren't there --

Q Were you present at the time?

A Not in the same room with Corporal David.

Q Not in the same room?

A No, sir.

Q Well, did you hear the conversation or the telephone ring, followed by conversation about the riot?

A Yes, I heard the conversation similar to what was going on.

Q Did you have occasion to note the time?

A Not at that time I didn't, no, sir.

Q Well, is any entry or any record kept of the conversations with respect to matters of that kind at the guard house?

A Not at that time there was no record kept, sir.

Q There was no record kept at that time?

A No, sir.

Q. Well, at approximately what time was it that you heard the telephone ring and followed by conversation with Corporal David with respect to the riot?

A I set the time at approximately 2320 or '22.

Q 2320 or 2322?

A That's right.

Q And, as I understand, there was a subsequent call?

A That is correct.

Q Which you personally took?

A That's right, sir.

Q Who was that call from?

A Sergeant Aubery, 650th Port Company.

Q About what time was that?

A That was exactly at 2330.

Q Now, was anything done after the first call came in?

A When the first call was received the process of dispatching Sergeant Jones and three men was already underway.

Q You mean at the time the first call come in the men were being dispatched?

A That is correct.

Q Well, you had knowledge then something unusual was occurring in the Italian area before the call came in?

A That is correct, sir.

Q I see. And how did you obtain that information?

A Staff Sergeant Robinson and Private Lomax, who were on jeep patrol, reported to the guard house that they had taken an

injured colored soldier to the hospital.

Q And do you know the time that that report was made?

A That was approximately 2320.

Q Or just about the same time the first call came in, or slightly before?

A That is correct, sir.

Q Well, did you personally issue the instructions with respect to the M.P.'s going down there to the Italian area?

A That's right, sir.

Q And who did you dispatch?

A I dispatched Sergeant Jones and three supernumeraries.

Q Sergeant Jones and three supernumeraries at that time?

A That is correct, sir.

Q Well, Sergeant, about how long did it take them to get out of the guard house?

Trial Judge Advocate: Well, did he go along? Did you go along with them at that time?

The Witness: No, sir.

Q Well, what I am trying to get at, from the time that you directed them to go until they went out of the front door, how long a period of time elapsed?

A Not more than three or four minutes.

Q Not more than three or four minutes. Did you subsequently hear a motor on the outside?

A No, I can't say that I did.

Q You can't say that you did. All right. Then did you at a later time dispatch other M.P.'s to the scene of the Italian area?

A I didn't personally. I ordered the corporal, Corporal Biscan to go to the guard house and bring the M.P.'s.

Q And about what time was that?

A Well, must have been approximately 2335.

Q That was after you received the second call?

A That's right.

Q From Sergeant Aubrey?

A Yes, sir.

Q About what time did you leave the guard house yourself?

A About 2331 or '32.

Q 2331 or '2. And did you go directly to the Italian area?

A That is correct.

Q By motor vehicle?

A Yes, sir.

Q And how long did it take you to get down there?

A Not more than three minutes.

Q Not more than three minutes. Pretty dark that night, wasn't it, Sergeant?

A Yes, it was.

Q Do you recall the condition of the weather?

A The weather, I believe, was cloudy. It started raining, I believe, a little later on.

Q Overcast and cloudy, would that be an accurate description?

A I think that would be correct, although I didn't particularly observe it.

Q Now, on your way down to the Italian area and before you reached the actual Italian area did you request the assistance of anyone?

A No, sir.

Q Colored soldiers, I mean?

A No, sir.

Q You didn't personally?

A No.

Q Did you hear anyone else request, that is, connected with the M.P.'s, request the assistance of any colored soldiers?

A No, sir. There was no one with me except Corporal Biscan and we went directly to the area.

Q Now, when you first got to the area about how many colored soldiers would you estimate were in the area, Sergeant?

A That is a big area and I could only see a small part of it at one time. Thinking back on it, I would estimate there was approximately between 150 and 200 colored troops in the area.

Q About 150 to 200. Was it pretty difficult to see them, to identify them?

A Yes, sir.

Q And why was that, Sergeant?

A Well, as I said, the sky was more or less overcast; the barracks were situated in something of a grove down there; there were no outside lights, and it was generally pretty dark.

Q Now, I think you said you went up to the end of one of the barracks. Was that 708 or 709; I don't recall.

A I believe it was 709.

Q And there was somebody there with an ax?

A An ax or some type of weapon for prying open the door.

Q Was it possible for you at that time to recognize or be able to identify any of those men?

A No, because there was a great deal of milling around.

Q A lot of confusion?

A That's right, sir.

Q Pretty dark down through that area too, wasn't it?

A Yes.

Q Now, Sergeant, about how long a period of time all together were you in the Italian area?

A You mean continuous?

Q Well, did you leave and go back?

A Yes, sir.

Q Well, you might just describe your movements as best you can, giving us approximate periods of time you were there and left.

A When I first arrived it was about 2333 and I remained in the area until the area was cleared and everything was under control, sentries posted, about approximately 2400. I then left the area with Lt. Cistron, the Officer of the Day, and went to the post guard house.

Q Let me ask you at this time about what time was it that the Officer of the Day arrived on the scene?

A He arrived at approximately 2345.

Q Pursuant to your notification or your call did he come down?

A Yes, sir.

Q And about what time was it that you and the Officer of the Day left the area?

A Approximately 2400 or shortly afterwards.

Q That is just about when you left?

A Yes.

Q Well, are you able to identify anyone that you saw in the area that night, in the orderly room, or anywhere else?

A No, sir.

Q Have you attempted to do so?

A Yes.

Q Were any company officers at the scene that night, Sergeant?

A Captain Carter was there.

Q Captain Carter wasn't a company officer, was he, at that time?

A He was the OIC.

Q Well, he was attached to the M.P. Company?

A Yes.

Q I mean any officers connected with any Negro soldiers present

that night?

A No, sir.

Q Were they notified?

A Major Orem, when he arrived, designated me to call them by phone and have them come out as soon as possible.

Q Where did you attempt to call them by phone?

A I attempted to call them from the guard house from the various numbers in the book, and with the help of the telephone operators tried to locate them.

Q Were you ever successful in getting them?

A Got hold of one officer by phone, but I don't recall which one it was.

Q About what time?

A It must have been about 1:00 or after.

Defense: I think that is all the questions I have.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant, when you went to that Italian area what was your purpose; what was your main objective when you were there?

A The main objective in going down there was not only to see how Jones and his three men were coming out but to determine the seriousness of the trouble.

Q Did you or not find it a rather serious situation?

Defense: If the Court please, that isn't a proper question.

Q All right. Just what sort of a situation did you find it to be? He said he went down there for the purpose of determining whether or not -- how serious it was.

Defense: He is telling what he saw. I think he has already said what he saw.

Trial Judge Advocate: Well, this strikes at a matter you brought out.

Q Just tell the Court from the standpoint of your own reaction what you did find.

Defense: Object to the form of the question. I don't think it is proper for this witness to give his reaction.

Law Member: Overruled.

Defense: The Court is ruling this witness may give his reaction?

Law Member: The effect of acts constituting a riot can be described, and I assume that is what he is doing.

Trial Judge Advocate: That's right, sir.

Q Will you answer it, please, Sergeant.

A On arriving at the area with Corporal Biscan I noticed large numbers of colored soldiers standing around at the intersection approaching the area and very, very disbursed throughout the area.

Q Were any of them armed?

A That I couldn't say, but they were milling around and it didn't look very good.

Q When I say armed, I don't mean with guns; you understand that. Did you see any with clubs? I don't mean any particular one you identified, but just Negro soldiers you saw in the area.

A Well, the situation was such a large number were milling around and I didn't particularly observe whether they had club~~w~~ or not. The fact they were out of their barracks and in the street, and congregating at that hour of the night, indicated something was taking place of a serious nature.

Q You told the Court about drawing your revolver in order to get the Negro soldiers to disburse. Will you tell the Court just what the situation was at that time that caused you to draw a revolver?

A Well, after I observed these men in the street, congregating, I immediately got out of the jeep and dispatched Corporal Biscan to the guard house to summon the M.P.'s we had collected there. I then walked down between the barracks into the immediate Italian area. As I walked between two of the barracks trying to locate Sergeant Jones --

Q Let's see what barracks those were.

A I believe it was 708 and 709.

Q Were they the first two barracks you came to in the Italian area?

A Yes.

Q All right; 708, 709. Go ahead, please.

A I walked clear down to the road, I believe it is to the west of the area, and I heard a great deal of shouting at the far end of the barracks, a lot of voices.

Q What barracks was that?

A That was in the rear of 709.

Q Rear of 709. All right.

A I turned and come back towards the rear of 709 barracks, and there was a large number of Negroes had gathered around the rear door.

Q How many would you estimate had gathered around the rear door of 709?

A Must have been twenty-five or thirty anyway.

Q All right; please proceed.

A They were attempting to force the door open of the barracks. I jumped up on the platform adjoining the steps, drew my revolver, and pushed as many Negroes off the steps as I could.

Defense: If the Court please, this is all repetition. It is a matter Counsel went into on direct examination.

Law Member: Continue.

Q Now, Sergeant Callahan, with that situation prevailing there before you, what was your purpose; were you trying to disburse those soldiers or were you trying to identify them?

A I was trying to disburse the soldiers; to stop as many injuries or casualties to Italian personnel as possible.

Q Could you tell what it was that they were trying to force entrance to that door of barracks 709 with?

A Not definitely. My impression now it was an ax at the time, but I wouldn't be sure.

Q Now, how long was it before or what period of time elapsed before you went down to the orderly room?

A Must have been approximately fifteen minutes from that time until I got to the orderly room.

Q Had or not the Negro soldiers been cleared out of the orderly room at that time?

A Yes, they had been cleared out. The M.P.'s from the guard house had arrived in the meantime.

Trial Judge Advocate: The prosecution has no further questions.

Defense: The defense has no further questions.

President: Any questions by the Court?

EXAMINATION BY THE COURT

Questions by Major Crocker:

Q Sergeant, you have mentioned there were a lot of Negro soldiers outside of the end of the barracks and in the street, is that correct?

A Yes, sir.

Q And you observed them on your way down to the Italian area itself, is that right?

A That is correct, sir.

Q When you gave the figure of 150 or 200 Negro soldiers being there, were you including the men who were milling around in the street and outside of their own barracks?

A No, sir. The figure would be much higher if you included those.

Q Well, now, I am directing your attention merely to the immediate vicinity of the Italian orderly room and barracks. About how many men did you observe there?

A Well, that is what I based my estimate on, that there was approximately 150 colored troops in the immediate area of the Italian barracks, the orderly room, supply tents, and so on.

Q. Was that number there when you arrived or did some of them come in later?

A The area is such I had no way of knowing how many entered or left. I estimate there possibly could have been that many present at the time of my arrival.

Q As you approached the orderly room to go in were there many Negro soldiers standing around the doors of that building?

A At the time I reached the orderly room that area had been cleared.

Q And some of your men were inside already, is that correct?

A Yes, sir.

Major Crocker: Thank you.

President: Any further questions?

Questions by Major MacLennan:

Q Sergeant, when you testified that you saw a group of colored soldiers outside the barracks, outside their barracks, do you mean immediately outside or just somewhere else than where they should have been?

A I meant in the streets surrounding the barracks.

Q Surrounding the colored barracks?

A That's right, sir.

President: Any further questions? If not, the witness will be excused --

Trial Judge Advocate: Just one other question.

President: All right

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Major Crocker asked you about your estimate of the number of

soldiers there, at the time you arrived, Sergeant Callahan. In order to enable Major Crocker and other members of the Court to get just as good an idea of that as possible, was that just a rough estimate that you made or did you stop to take a pretty careful note of how many were there, or what does it represent?

A It represents just a rough estimate. It is my impression. I didn't have much time to take note or count heads.

Q Could you or not be in error about the number?

A It is very possible.

Trial Judge Advocate: That is all.

President: No further questions. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

President: The Court will recess and reconvene at 1:30.

The Court thereupon recessed at 12:00 noon and reconvened at 1:30 o'clock p.m., 2 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Yes, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show that each accused is present, that all members of the Court are present, the personnel representing the accused and the personnel of the prosecution.

The reporter was also present.

Trial Judge Advocate: Now, if the Court please, I understand Major McNay is present with the information the Court requested, and with the permission of the Court I will call him back.

Defense: May I read this into the record before you do. May it please the Court, it is stipulated between Counsel for the prosecution and Counsel for the defense that on August 14th there were quartered within the area shown in Prosecution Exhibit 2 the 650th Port Company, the 651st Port Company, the 578th Port Company and the 28th Italian Quartermaster Service Company, and that the strength of these companies was as follows: 650th Port Company -- that is, the enlisted strength -- 214;

651st Port Company, 218; 578th Port Company, 180; 28th Italian Quartermaster Service Company, 206.

Law Member: That is within the area represented by Prosecution Exhibit No. 2?

Trial Judge Advocate: That is correct.

Defense: That's right.

Law Member: Subject to objection by any member of the Court, that stipulation will be received.

Trial Judge Advocate: While on the subject of stipulations, there is another stipulation --

Law Member: Let's get this one straight.

President: Any objection by members of the Court? There appears to be no objection.

Trial Judge Advocate: There is another stipulation that Counsel for the accused and the prosecution have entered into. It is stipulated between the prosecution and the defense that the witness, Major W. W. Orem, who has testified to the Court, if called as a witness will testify that the dogtag bearing the Name of John L. Hamilton was the only dogtag handed to him by Sergeant Callahan, and that he, Major Orem, handed such dogtag to Sergeant Fred Johnson.

Law Member: You so stipulate about this dogtag?

Defense: That if Major Orem were called that he would so testify.

Law Member: Yes.

Defense: That is correct, sir. I don't stipulate it is the fact; I stipulate if it were Major Orem he would testify as announced by Counsel.

Law Member: Does the accused John Hamilton also stipulate?

Defense: I haven't consulted with him.

Law Member: Will you explain it to him, please, Major.

Defense Counsel then consulted with the accused as requested by the Law Member.

Defense: I think the accused Hamilton is ready to reply to the inquiry.

Law Member: Mr. Hamilton, will you stand up, please.

Pfc. John L. Hamilton: Yes, sir.

Law Member: Do you understand there is a stipulation proposed here that if Major Orem came back to take the stand he would testify that the dogtag that has been marked Prosecution Exhibit 39 for identification is the only dogtag that he had in his possession, and that that dogtag is Prosecution Exhibit No. 39 for identification. Now do you understand that and do you so stipulate?

Pfc. John L. Hamilton: Yes, sir.

Law Member: Then subject to objection by any member of the Court, the stipulation of Counsel for the prosecution and Counsel for the defense and the accused will be received.

President: Is there any objection? There appears to be none. The opinion of the Law Member is the ruling of the Court.

Trial Judge Advocate: I offer in evidence the dogtag already identified as Prosecution Exhibit 39.

Law Member: You offer the dogtag?

Trial Judge Advocate: The dogtag as a prosecution exhibit. It is now Prosecution Exhibit 39 for identification. Let's leave it the same number.

Defense: No objection.

Law Member: It will be received as Prosecution Exhibit 39.

The dogtag previously marked Prosecution Exhibit 39 for identification was marked Prosecution Exhibit 39 and received in evidence.

Trial Judge Advocate: Is the Court now ready for Major McNay?

President: Yes.

Major G. H. McNay, Corps of Engineers, a witness for the prosecution, was recalled and testified further, as follows:

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Have a seat, please, Major. You are reminded you are still under oath; you have been sworn before.

A Yes, sir.

Q And you are still under oath. Major McNay, when you last appeared as a witness in this case the Court asked you to ascertain certain facts for us. One of those was the distance by actual measurement from the recreation hall to

the point where the cable is at the obstacle course and I will ask you if you have ascertained that measurement.

Defense: That was over the path, wasn't it, Colonel?

Trial Judge Advocate: Over the path; that is correct.

A From the southwest corner of the recreation hall by the easiest means to the tree we stepped 184 paces, but the slope and the condition of the ground was such we did not believe that was dependable so we put a metallic tape on it and got 398 feet. That is a meandering measurement.

President: That was the measure from the --

The Witness: Southwest corner of the recreation hall to a tree; 398.

Q Did you follow the path or is there a path?

A There is a path over the route that I traveled.

Q And did you or not follow that path in making your measurements?

A Yes, sir.

Q I believe there was some other measurement the Court asked you to obtain. Do you remember what that was; I don't.

A There was one from the tree to the approximate location or elevation of the original road.

Q That's right.

A That was 61 feet. 61 feet from the tree to the approximate elevation of the old road.

Defense: That is the road that existed on August 14, Major?

The Witness: Yes, sir.

Law Member: How far was that?

The Witness: 61 feet.

Defense: May I ask one question?

Trial Judge Advocate: Surely.

RECROSS-EXAMINATION

Questions by Defense:

Q You say it was the elevation of the old road, Major. Was that the usable portion of the old road?

A Yes.

Q That could be used by motor vehicle?

A That is correct.

Law Member: Well, for all intents and purposes the 61 feet is the distance from the tree to the road that was there on August 14; is that correct?

Defense: That is correct. So the Court will recall if there is any doubt about it, that road is being filled constantly there.

Law Member: Did we ask you -- I don't recall myself -- to ascertain the exact distance down Lawton Road to Utah and over Utah to Missouri, and then up Missouri --

The Witness: I believe the Colonel asked to have that checked. I didn't do it with a tape, I did it with a speedometer, and I found that distance to be .75 of a mile. That is within less than 500 feet, Major, of the distance I gave you on the map. 3900 feet, I believe.

Major MacLennan: About three quarter of a mile?

The Witness: Yes.

Q Once again, that was from where to where?

A That is following the street system from building 713, the orderly room, back along Lawton Road to Utah Street, west until you came to what we call the North Beach road, and then down to the tree.

President: Any further questions?

Trial Judge Advocate: Yes, I have one more question.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Major McNay, I am going to pass to you Prosecution Exhibit 19 and I will ask you whether or not any -- well, let me ask you this first. Are you acquainted with the use that is made at Fort Lawton of such a gadget as you have there in your hand, Prosecution Exhibit 19?

A I haven't see this exact one, but I have seen similar pieces used for trash receptacles and cigarette cans.

Q Do you know whether or not any of those were in use in August 1944 in the Italian area?

A I don't believe I can testify to that, sir.

Q Do you know whether or not they were in use in the area occupied by the 650th, 651st Port Companies, and the 578th Port Company?

A I am not qualified to state that.

Q All right: thank you. When you say trash receptacles is there any particular type of trash that those are used for?

A I have seen them used for cigarette butts and candy wrappers and such things of that sort.

Trial Judge Advocate: That is all.

President: Any further cross-examination?

Defense: No, I have no questions.

President: Any questions by the Court?

Defense: Oh, I would like to ask one question.

RECROSS-EXAMINATION

Questions by Defense:

Q Major, are you able to give the Court the approximate distance from what we have marked as tent 1 on Prosecution Exhibit 2 to the point in the vicinity of the recreation hall from which you took your measurement?

A I believe I can get that from the first map we had.

Q I wonder if you would do that.

A Major, from the southwest corner of the test that you referred to to the southwest corner of the recreation hall -- that is where that path runs -- it is 210 feet.

Q That is on a straight line between the two?

A On a straight line.

President: 210 feet?

The Witness: 210 feet, sir.

President: Major McNay, were you successful in getting that exhibit we asked for?

The Witness: May I advise the Colonel that I have certain additions on here in the way of those tents and the recreation hall that the District Engineer did not have and they have not been added to these drawings. I did not want to do it myself unless you wished me to. Now I can leave the original map with you if I can have one of these.

President: You leave the original map and you can have all of them.

The Witness: All right, sir.

Law Member: Major Beeks, would you like, and I think it should be done, would you like the witness, Major McNay, to make these tracing copies exactly the same as the exhibit put into evidence?

Defense: I don't quite clearly understand.

Law Member: (To Major McNay) You mean we can have --

The Witness: Yes, sir, you can have the ones we have

always worked from if I can have one of these.

President: You can have all of them if you leave the one.

The Witness: Thank you, sir.

Q Major, just so there won't be any misunderstanding, Prosecution Exhibit 32 does not show the road which we referred to as the north shore road?

A That is correct.

Q Could you draw that in roughly so that --

A On this map?

Q Yes.

A The area is not there, Major.

Q Oh, I see.

A Here is the cliff and the road is clear up here (indicating).

Q With the Court's permission, Major McNay is going to draw in the easterly end of the road we referred to as the north shore road, so that Prosecution Exhibit 32 will show the junction of what we referred to as the north shore road and Missouri Avenue.

A (Witness indicates on map as requested.)

Defense: That is all.

President: The witness may be excused.

There being no further testimony, the witness was excused and withdrew.

Private Clyde V. Lomax, Security Detachment, Fort Lawton, Washington, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Have a seat. Please state your name.

A Private Clyde V. Lomax.

Q And your organization?

A Security Detachment, sir.

President: Speak up so we can hear you.

The Witness: Security Detachment.

Q And your station, Private Lomax?

A Fort Lawton, Washington.

Q Private Lomax, do you recall the incident on the evening of August 14, 1944, when some Negro soldiers entered the Italian area at Fort Lawton?

A Yes, sir, I do.

Law Member: We have to hear you.

The Witness: Yes, sir; I do.

President: You are not talking to him; you are talking to us.

The Witness: Yes, sir.

Q Now, on that particular evening, Private Lomax, I will ask you whether or not you had occasion to be in the vicinity of barracks 719 on Virginia Avenue prior to the time the incident occurred, just before the incident occurred.

A About what time, sir?

Q I haven't set the time; just that evening some time before the incident occurred did you have occasion to be in the vicinity of barracks 719?

A Yes, sir.

Q Now, come with me to this map, will you, so we can get oriented. This is Prosecution Exhibit 2, and here runs Virginia Avenue; this is barracks 719; this is a mess hall just sort of across the street from the building 700; here runs Lawton Road into the Italian area; here is barracks 708, and 709, and 713, and here is the latrine, 712. (Trial Judge Advocate has been indicating on Prosecution Exhibit 2.)

A Yes, sir.)

Q You see from that about how that runs. Now, when you were in front of barracks 719 what, if anything, did you see?

A One boy standing -- laying there -- and looked like he was sick or knocked out or something. We couldn't tell the difference, whether he was really badly hurt or not.

Q Now, when you say one boy --

A One colored boy.

Q Was he a soldier?

A Yes, sir.

Q Were you at that time on military police duty?

A Yes, sir, I was.

Q All right. Now, aside from that one boy that was lying on the ground did you or not see any other Negro soldiers?

A Yes, sir, I did.

Q Did you stop to inquire what the difficulty was with respect

to this Negro soldier who was laying on the ground?

A Well, sir, one of them called out --

Defense: Now, just a moment, if the Court please. This question he asked him could be answered yes or no. I may have an objection to the rest of the question when he asks it.

Trial Judge Advocate: (To reporter) Let's read the question again.

(Question read by reporter.)

A We asked what was the matter, sir.

Q You asked what was the matter?

A What was the matter with him.

Q All right. Did you thereafter or not decide to take this Negro soldier anywhere?

A Yes, sir. Decided to take him to the hospital, sir.

Q You decided to take him to the hospital. All right. Now, while you were present and arranging to take this Negro soldier to the hospital did you or not see any other Negro soldiers congregate, that is, gather, in that vicinity?

A Standing there when we took him away, sir.

Q About how many would you say were gathering there?

A About twenty-five or thirty of them, sir.

Q All right. Did you or not see anyone blow a whistle?

A Sir, I stepped on the outside. Pulled up the seat of the jeep to put the colored boy inside the jeep, and one of them called out, "They got one of our boys and we are going to mob them". He ran across the street blowing a whistle as loud as he could blow. They got one of our boys and we are going to mob them. I don't know who he was referring to; whether me or not. I don't know.

Q Now, the man who made that remark, "They got one of our boys; we are going to mob them", was he or not the man that was blowing the whistle or that had blown the whistle?

A Yes, sir, he is the one.

Q Now, which way did he run, did you say?

A Here is where you find 719 (indicating).

Q All right; from in front of barracks 719.

A From the corner.

Q All right. You pointed to --

A Right here (indicating).

Q Let me get that corner. You pointed from the southwest corner of 719. And he run which way?

A Up through here; sir (indicating).

Trial Judge Advocate: Can you see that, Major Beeks?

Defense: No, I can't.

A Ran right across here (indicating).

Q The southwest corner of 719. Point again.

A About right in there (indicating); catacorner to it, sir.
The boy ran right across here (indicating).

Q Towards the northeast corner of 716?

A Yes.

Q Now, did you or not at that time try to take away, or did you or not at that time take away this colored soldier, this Negro soldier, that appeared to be hurt?

A Yes, sir, we took him to the hospital.

Q Did you ascertain his name?

A We found his name after he got down to the hospital.

Q What did you find his name to be?

A Walton D. Montgomery.

Q Could it have been some other given name other than Walton?

Defense: Oh, I will stipulate it was William.

Trial Judge Advocate: Yes; that was the only one.

Q After you took him to the hospital what did you do?

A We reported to the guard house, sir.

Q Could you or not tell at the time you took the Negro soldier and put him in the jeep how badly he was hurt?

A No, sir, we did not know. That is the reason we rushed to the hospital with him, sir.

Q I will ask you, Private Lomax, if you were on patrol duty in the morning of August 15, 1944; that is the morning after the incident?

A Yes, sir, I was.

Q And with whom did you patrol?

A Private Pinkney.

Q Private Pinkney?

A Pinkney.

Q He is a Negro soldier?

A Negro soldier.

Q As you were on patrol duty the following morning did you or not come upon anything of an unusual nature?

A Yes, sir. I found one of these Italians hanging up there, sir.

Q Where was he hanging from?

A He was hanging from the obstacle course, from a wire, sir, with a rope stretched around him.

Q Did you take a pretty good look at him, Private Lomax?

A Yes, sir, I took a good look.

Q Will you please tell the Court what his general appearance was?

A He stood about five-eight or five-nine; weighed approximately 150; black hair; and his chest was out pretty bad, puffed out, and he had no shoes on and no pants.

Defense: I assume the witness meant when he said he stood, he was that tall.

Trial Judge Advocate: Yes, that is what he meant.

Q Was he dead or alive?

A Sir, he was dead.

Q And what did you say was around his neck?

A A rope, sir.

Q Can you give us some description of that rope?

A Something like a tent rope.

Q I will ask you to take a look at this rope; Private Lomax, and state to the Court whether or not it was that type of rope.

A Sir, it was one something like this. I wouldn't say definitely whether this was the rope or not because it has been a pretty good while since that happened.

Q Well, that is all I am asking; I am not asking you to definitely identify this rope, but was it a rope of that type?

A Yes, sir, I am pretty sure it was.

Trial Judge Advocate: now, I am offering this only for the purpose of the record showing what type of rope it was that he found this Italian suspended from.

Law Member: Any objection?

Defense: Yes, I think it is incompetent, irrelevant and immaterial, if the Court please, as well as prejudicial. If he has the exact rope or is able to identify it, I think that would be material.

Law Member: But it is merely offered as being of that type of rope. The offer isn't it is the exact rope.

Defense: I understand.

Law Member: The objection is overruled and the rope will be marked in evidence with the understanding this is not intended to represent the actual rope by which this man

found suspended from the cable in the morning of the 15th of August.

A rope was then marked Prosecution Exhibit 40 and received in evidence.

Q Was there any type of shoulder patch on the shirt worn by this Italian who was hanging from the cable?

A He had on a khaki shirt and he had a green patch with "Italy" on the side, a green and white patch.

Q Now, I will ask you, Private Lomax, whether or not the ground underneath the body was disturbed in any way prior to the time that Major Orem got there? Before Major Orem got there was it disturbed in any way -- before he got there?

A Sir, would you mind repeating it?

Q Yes; the question isn't perhaps clear. Now, from the time that you got there with Pinkney and saw the body suspended from this cable, from that time on until the time that Major Orem arrived -- were you there when Major Orem arrived?

A Yes, sir.

Q Now, from the time that you got there until the time Major Orem arrived did any of you in any way disturb the ground underneath the body?

A No; sir, we didn't.

Trial Judge Advocate: The prosecution has no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Lomax, when you were in the vicinity of the front of building 719, how long a period of time did you remain there?

A Sir, I would say about fifteen - twenty minutes

Q About fifteen - twenty minutes. And then about how long did it take you to get up to the hospital?

A Not very long.

Q About five minutes?

A About five minutes.

Q How long did you remain the vicinity of the hospital?

A As to that I couldn't say.

Q Were you there ten minutes, fifteen minutes?

A Might have been there about fifteen minutes.

Q Ten or fifteen minutes. Did you use the telephone while you were in the hospital?

A No, sir, I did not.

Q Now when you were down there in front of 719 did you regard this as a pretty serious matter -- what you saw at that time?

A Sir, I didn't know -- I thought it was -- it just come into my mind something was going to happen, and whether against us or against who we did not know.

Q You thought it was pretty serious?

A Well, I didn't think it was so bad as it really was.

Q Did you go into any barracks there and attempt to make a telephone call to call the Provost Marshal or the guard house?

A No, sir, I did not.

Q And after you got to the hospital you remained around there ten-fifteen minutes and never made any effort to phone the guard house and Provost Marshal.

A We put him in the hospital as quick as we could and reported into the guard house.

Q Well, there are telephones in the hospital, aren't there?

A Well, they are in there, sir, but we were too busy with this boy; didn't know how badly he was hurt.

Q Well, you got the boy in there and left him there, didn't you?

A We had to give his name, sir.

Q I understand that; but you did deliver him over to somebody who accepted him?

A We did, sir.

Q And after that you made no efforts to use the telephone?

A No, sir. After that we went right out to the guard house, sir.

Q Now the following morning you were on patrol with Pinkney?

A He was with me.

Q Well, he was with you; yes. Well, two together?

A Both together.

Q John Pinkney is one of these colored soldiers?

A I don't know his first name.

Q Well, Pinkney is one of the colored soldiers; he is not a regular M.P.?

A Not that I know of, but he had an M.P. band on.

Q He was just kind of a volunteer that night, wasn't he?

A Well, I am pretty sure he was, sir.

Q After you came across the body did one of you remain there?

A No, sir, we both got in the carryall and went up to find Major Orem, and Major Orem wasn't there and Sergeant Robinson

and myself got in the jeep and we reported it to the guard house.

Q From the time you found the body until you come back down there to where the body was, about how long a period of time transpired?

A I should say about five-six minutes.

Q You mean to say you got into your car and went clear up to get Major Orem and got clear back down in five-six minutes.

A Pretty close to that.

Q That fast?

A It was pretty fast.

Q In any event, nobody was left down around the tree at that time?

A Nobody but the Italian, sir.

Q He didn't know what was going on, I imagine?

A Not quite.

Q So you don't know in that period of time whether anybody else walked in through there or trampled the ground or anything else do you?

A No, sir, I don't.

Defense; That is all.

Trial Judge Advocate: The prosecution has no further questions, if it please the Court.

President: Any questions by members of the Court? There appears to be none. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Private First Class Elby J. Murray, 651st Port Company, Camp George Jordan, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Sit down, please. State your name.

A Pfc. Elby J. Murray.

Q M-u-r-r-a-y?

A Yes, sir.

President: J?

The Witness: Yes, sir.

Q And what is your organization?

A 651st Port Company.

Q 651st Port Company. And where are you stationed now?

A Camp George Jordan.

Q Camp George Jordan. Now, please speak out loud so that every member of this Court can hear you. I am not the only one interested, or Major Beeks, but every member of this Court wants to hear what you say.

A Concerning the case?

Q Yes, but I will ask you questions about it; but I just want you to speak out loud so members of the Court can hear you.

A I see.

Q All right. Now, do you remember the time, the occasion, on August 14, 1944, when some Negro soldiers went down into the Italian area at Fort Lawton?

A Yes, sir, I remember.

Q Were you down there yourself?

A I went down there afterwards, a good while afterwards.

Q A good while after it started?

A Yes, sir.

Q Now, when you went down there just where did you go?

A I came down the Lawton Road.

Q Lawton Road. All right. Come up here with me, will you please. I want to show you a map that is Prosecution Exhibit No. 2. What barracks did you stay in, by the way?

A 665.

Q All right. Here is barracks 665 right over here (indicating).

A Yes, sir.

Q Now step over to the side a little so the members of the Court can all see. 665. Now you went down Lawton Road. On this map this is Lawton Road (indicating), comes along here; goes into the Italian area, you see. This is the 578th mess hall; that is marked 700, see.

A Yes, sir.

Q And here is one barracks in the Italian area, 708, here is another barracks in the Italian area, 709. When you went into that area how far did you go?

A I came by, you know, where you get the groceries.

Q No, I don't know where you get the groceries; I am afraid the members of the Court don't either. I wonder if you could point out on this map. When you started down this road did you get passed the mess hall?

A I passed the mess hall.

Q Do you know where the first barracks is?

A I think I do.

Q Did you get as far as the first barracks, 708?

A Yes, sir.

Q You did. Did you get as far as the second barracks, 709?

A Yes, sir.

Q Did you get as far as the orderly room?

A That is where I stopped.

Q All right; fine. Now, when you got into that area did you see any M.P.'s, any military police?

A Not when I first got there.

Q Not when you first got there. All right. Now, after you got there did you see any Negro soldiers there whom you recognized?

A No, sir, not at that point -- not at that time.

Q All right. Not at that time. Where after that time or how long after that time was it before you recognized any Negro soldiers?

A Well, I started around the side, in the dark, of the orderly room. Somebody was in the dark throwing stones and things up toward the orderly room. To avoid being hit with them I started back around the road. That is where I discovered the M.P.'s had a bunch of them in the street.

Q The M.P.'s had a bunch of them in the street?

A Yes, sir.

Q Come with me and show me about where those M.P.'s had a bunch of them in the street; can you show about where that was?

A Well, I imagine we was about along this street (indicating).

Q All right. Major, if you will step up here. Point again now, will you, please.

A (Witness indicates.)

Q That is to the southwest of barracks 708 in Lawton Road.

Defense: Looks to me like in front of barracks 708.

Q All right, let's see.

A (Witness indicates.)

Q In front of barracks 708 in Lawton Road. All right. You say the M.P.'s had some of them rounded up there. Did you recognize any of those rounded up there?

A I remember three of them when we was going back to our barracks.

Q Three of them came from where?

A Came from here (indicating).

Q From where the M.P.'s had them rounded up?

A Yes, sir.

Q All right. Who were those three you recognized?

A The three I recognized was Willie Curry --

Q Willie Curry.

A Herman Johnson.

Q Herman Johnson.

A And Roy L. Montgomery.

Q And Roy L. Montgomery. Now what was your Port Company?

A 651st.

Q 651st. And do you know what company the accused Willie Curry belonged to?

A He belonged to our company.

Q You mean the 651st?

A Yes, sir.

Q And do you know what company the accused Roy L. Montgomery belongs to?

A 651st.

Q Your company?

A Yes.

Q Do you know what company the accused Herman Johnson belongs to?

A 651st.

Q Your company?

A Yes, sir.

Q And you are telling the Court you saw those three?

A Yes, sir.

Q Did you see any others that you remember?

A No, sir, because I left from there after the M.P. told us to go.

Q Did you see whether or not an M.P. -- well, let me strike this. Just tell me what you did see an M.P. do at that time when he has the boys rounded up?

A Well, he was bringing them out into the road, bringing them out and they were standing in the road, and he pulled a pistol and he had it up in the air this way (indicating). He said, "You boys go on back to your area 'cause I don't want to hurt anybody unless I have to". At that time I left.

" You felt it was time to leave?

A Yes, sir.

Q I tell you what I wish you would do. Will you come with me

and let's point out the three men, if you see them among the accused, whom you say you saw there. Point them out as you see them.

A (Witness points to one of the accused.)

Q Which one is that? Come over here with me. Who did you point to?

A Roy L. Montgomery.

Q Roy L. Montgomery. All right, do you see either of the other two among the accused and if so point them out. All right, take them row by row and see if you see the other two. Take it man by man.

A Here is one (indicating).

Q Who is that?

A Herman Johnson.

Q Which one did you point to? Right here?

A Yes.

Trial Judge Advocate: Did the Court see that?

Q All right, take them row by row and man by man and see if you can find among those the other accused that you have mentioned, Willie Curry.

A Here (pointing to one of the accused).

Q Let's come around here and get a little closer. Now count from the corner here, from the end, and tell us which one he is.

A The sixth man.

Q The sixth man here (indicating one of the accused)?

A Yes, sir.

Q That is Willie Curry. All right. Have a seat. Now, are you or not under charges at this time?

A No, sir.

Q As far as you know?

A As far as I know.

Q Have you been promised anything for testifying?

A No, sir.

Q You are sure that no one has promised you anything?

A No, sir.

Q After you left that area that night did the accused Herman Johnson have any conversation with you?

A Not directly, but indirectly.

Q All right. I mean, was it some statement, something he said in your presence; is that what you mean?

A No, sir, he came and asked for something.

Q Oh, he came and asked for something. Were you present when he asked for something?

A Yes, sir.

Q All right. Tell the Court about that.

A Shortly after I left the barracks, approximately about five or ten minutes, Herman Johnson came into our barracks with the kitchen and office personnel and he asked did we have any extra tool. He said that the overseas entrenching tools had ran out before he got there; and Corporal Herman Redley -- he said if we had an extra one, give it to him -- and this Herman Redley told him he would check over the tools and if we had an extra one we would give it to him. So in checking over the tools he found an extra one and we gave it to him.

Q Now, in order that the Court may understand fully what you are testifying to, will you tell the Court again, what, if anything, Herman Johnson said, the accused Herman Johnson said, as to what had become of his trenching shovel?

A He said the supplies ran out before he was issued one.

Q Now, about how long after you left the Italian area was it that you heard the accused Herman Johnson make that request?

A Well, he got in the barracks right after I got in there, about five, maybe ten, minutes.

Q About five or ten minutes after you returned from the Italian area. All right. Now what particular work were you doing there?

A Well, on the evening of August 14 according to the paper our Company Commander gave Sergeant Ernest Graham, the mess sergeant, and Sergeant Redley, the supply sergeant, orders to issue out supplies in the mess hall on the account of the supply room being so small, so after supper -- I imagine around 7:00 or 7:30 -- we began issuing out supplies; and it was very late when they got through. So when we got through issuing supplies out I had to round up the K.P.'s and start cleaning up the mess hall. That is why I was over there so late that night.

Trial Judge Advocate: The prosecution has no further questions.

CROSS-EXAMINATION

Questions by Defense:

Q Murray, you were sent over to the Southwest Pacific, weren't you?

A Somewheres, yes, sir.

Q Weren't you in the Southwest Pacific?

A Yes, sir.

Q And you were brought back here a short time ago?

A Yes, sir.

Q What did you think when you were brought back; that you were being brought back to stand trial?

A My Company Commander told me I was being brought back on special orders. That is the only thing.

Q Special orders; yes. Didn't you kind of wonder what the cause of your returning back here was?

A I did.

Q Didn't you think you were going to stand trial in this case?

A I didn't know what it was about. I hoped I wouldn't.

Q You hoped you wouldn't?

A Yes.

Q You hoped you wouldn't; that's right. Have you discussed this case with anybody before coming here to testify today?

A No, sir.

Q Not a soul?

A No, sir.

Q You are sure of that?

A Yes, sir; I am sure.

Q Didn't Colonel Jaworski talk to you about this case?

A I don't know Colonel Jaworski.

Q Well, the good looking gentleman sitting over across from me. He has never talked to you about it?

A No, sir, not more than when I made the statement I first give. No more than the statement I made when I first came.

Trial Judge Advocate: (To Court) He said no more than the statement he made when he first came here.

Q Then he has talked to you about it?

A Yes, sir, the first morning when I got to Seattle.

Q And I have talked to you?

A Yes, sir.

Q Yes.

Law Member: You used the word discussed.

Defense: I think this witness knew what I meant.

Q Now, that was down at Camp Jordan I talked to you about this case?

A Yes.

Q And Captain Noyd was there?

A I think so.

Q And a girl was there taking things down in shorthand?

A Yes, sir.

Q Did you tell me the same story about this case you have told here today?

A Yes, sir.

Q You told exactly the same story, did you?

A Yes, sir.

Q Are you sure of that?

A Yes, sir. In other words, I would even like to get up and explain to the Court just where I was and how long I was down there. I would rather do that than let them pick it out.

Q Now, let me ask you this. Did you tell me you had gone to the Italian area?

A I think I did.

Q You think you told me that?

A Yes, sir.

Q Well, let me read you some of your testimony and see if you don't recall what you told me.

Defense: Now I will say this to the Court and Counsel. In reading I am going to omit some matters here I did ask him, which the Court has ruled I might not inquire into.

Law Member: Wait just a minute. What did I say you couldn't inquire into?

Defense: Well, the other day I went into some matters that occurred at the PX and the Court ruled I couldn't inquire into them. There are some questions in this transcript with respect to those and I was going to omit those.

Q Let me read these questions and answers to you and then you tell me if those aren't the questions I asked you down there and the answers that you gave:

"Q What barracks did you live in? A I think it was building 665. Q On the night of the Italian riot where were you at approximately 10:00? A Around 10:00 I was in the kitchen. You see, during the night of that riot we had an order from our Company Commander to let the supply sergeant in to issue supplies in the mess hall. After getting through issuing supplies we had to get the K.P.'s together and give the mess hall a general cleaning. It was very late when I got through. Q Were you in the mess hall all during the time? A I was. Q What time did you leave the mess hall? A I don't know. I didn't have any watch. Q Well, who was working over there in the mess hall during that time? A I can't remember the K.P.'s, but I do know Sergeant Ernest Graham was there all evening. We had a cook with us, Herman Redley, and we took care of the work. Q Were you

there until Sergeant Graham left? A No, sir, I left before Sergeant Graham. He said we got the work pretty well in hand; you go on back. Q Were you in the same barracks with Graham? A Yes, sir. Q Did you go with Redley? A I left by myself. Q As you were leaving the mess hall you had to walk down here towards a barracks? A To the one facing the area where 719 is located. Q Did you see a crowd around 719? A No, sir. Q Did you see a crowd going back and forth to the Italian area? A No, sir. After I got into the barracks I saw cars and things going towards the Italian area. Q Did you see Graham when he came in? A Yes, sir. I slept by the door. Q -- "

A No, sir, I did not sleep by the door. I told you Sergeant Graham slept by the door.

Q You let me read here and tell me if this is what you said or didn't say.

Trial Judge Advocate: He has the right to correct as he goes along because there is so much.

Law Member: (To Trial Judge Advocate) You keep notes.

Q That is all correct up to that point except you told me Sergeant Graham slept by the door instead of yourself, is that right?

A Yes.

Q All right, I will go on:

"Q This may be important as far as Graham is concerned and I want you to think hard to try to estimate the time when you came into the barracks and until you saw Graham come in. A I like to be very careful in making a statement. It wasn't too long, I know that. Q How long was it after you got in before you heard the trucks and cars going down to the Italian area? A Maybe about twenty minutes. Q Was it before you heard cars and things going down towards the Italian area that Graham came in? A Graham was in the barracks. I think he was in there. Q At the time you left the mess hall Graham still had more work to do? A He said he had to lock up. Q Did you see Sergeant Cabrel coming into your barracks? A He might have. I don't recall. Q When you got to your barracks did you see any of these men in there; John R. Brown? A No, sir. Q Did he sleep in your barracks? A No, sir. Q Sylvester Campbell? A He was one of the cooks. I think he was in. I am not positive he stayed in there all the time. Q Was he in there all the time that night? A I couldn't swear to that. Half are off one day and the other half off the next day, and Sylvester was off that day. I think he was in. Q After you came to the barracks from the mess hall was he there? A Yes, sir. My bed was over there and his was right at the foot of mine. Q Was he in there at that time? A Yes, sir. Q Did he go out? A I don't remember. Q Do you have a recollection of seeing him there all evening? A Yes, sir. Q How about Willie Curry? A He didn't stay there.

Q Herman Johnson? A He didn't stay in there. Q Roy Montgomery?
A He didn't stay in there. I don't remember Campbell going out.
Q You never went out yourself? A No, sir. Q Why were you
brought back from overseas? A I don't know sir. They just
told me to come along. Q They tell you they wanted you as a
witness? A All they told me was they wanted me to come back.
Q When you heard the noise going on down there you didn't have
any idea what it was? A No, sir. Q What was the first you
knew of it? A Just when we looked through the window and saw
trucks going down. Q Just trucks going down wouldn't indicate
trouble going on; what could you see through the window? A The
lights of the truck. Q You couldn't see any men? A No, sir.
Q As you were looking out of the window you were discussing
what was going on? A We was wondering what was going on. We
just stood there and looked. Q Was Sylvester Campbell standing
at the window? A He might have been. Q You don't definitely
recall? A No, sir. Q Where was Graham? A I know he was in
there the next morning. The K.P.'s were rushed down and we left
early, but they came back to the track and brought us back. Q
When you came to the barracks after you finished detail in the
mess hall do you recall seeing Sylvester Campbell and Graham?
A Yes, sir. Q Was Campbell already in when you came in? A
Yes, sir. Q How was he dressed; did he have all his clothes
on? A I don't remember. Q When Graham came in what did he
do? A We all went to packing."

Now, down to that point isn't that what you told me?
A I think it is.

Q Yes. Now, let's have a little bit more here:

"Q Did you hear any colored soldier discuss this
afterwards? A No, sir. Q Did any make any admissions? A
No, sir."

Didn't you say that too?
A What do you mean, admissions?

Q You don't know what an admission is?
A No, sir.

Q Are you sure of that?
A Yes, sir.

Q Why didn't you ask me that day if you didn't know what an
admission was?
A I didn't want to be bothered.

Law Member: He hasn't testified to any admissions today
either, Major.

Defense: Well, I think that is a matter of construction,
if the Court please.

Trial Judge Advocate: It is very clear he hasn't, if the
Court please. I suggest there is nothing impeaching in what

Counsel has read.

Law Member: The only thing, I don't quite get it. From what I heard it would appear -- and I may stand corrected -- it may appear that this witness testified for Major Beeks that after he had returned from his work that he never again left the barracks, whereas today he said he went down as far as the orderly room and on his way back he saw these three accused.

Trial Judge Advocate: Well, that, of course, depends on the construction of some answers it is true. Now, I didn't understand the answer to be that he didn't leave there that night. I didn't so understand. It may be that it is. If that is his answer, of course the Court has heard it.

The Witness: I didn't tell him I didn't leave.

Trial Judge Advocate: But I just felt that by far, if not the entire examination, by far the major portion of it had nothing of an impeaching nature in it.

Defense: If that testimony isn't impeaching, if the Court please, I might just as well fold up my brief case and go home.

Law Member: I tell you what I would like to have you do. I listened with great care to what you read and I would like to have you point out for me and for the members of the Court the particular points which you say are impeaching.

Defense: All right. The witness has just testified here on direct examination he went down to the Italian area and saw a lot of things.

Law Member: I have already brought out that.

Defense: He testified when I asked him these questions he came out of the mess hall, went into the barracks, and never went out again that evening.

Law Member: I have noted that.

Defense: Yes. If that isn't impeaching, I don't know what it is, if the Court please.

Law Member: Major, I agree with you that those two incidents in the testimony tend to impeach; but what else is there in addition to that? I thought that all of the rest of the testimony was almost exactly as he has given it today, and if that isn't so, I would like to be corrected.

Defense: I don't recall any two parts were the same, other than working in the mess hall, that are in accordance with what he has testified here today.

Law Member: I heard nothing today from the mouth of this

witness relative to any admission made by any accused pertaining to the happenings he described.

Defense: That may be, but if it isn't impeaching for a man to say he was down in one area one time and then to say the other time he never went down in that area -- that certainly is impeaching.

Law Member: Major, I am agreeing with you on that wholeheartedly.

Defense: All right; we are not in dispute then.

Law Member: But you read page after page and made the statement the whole thing impeached.

Defense: No, I read the entire testimony. Counsel argued with me before in connection with other witnesses he had about being unfair and of not reading all the testimony. So there would be no dispute in this witness' mind, or any doubt, I read him everything that took place down there.

Law Member: Well, we think you have been very fair, so opposing counsel's remarks have no bearing.

Trial Judge Advocate: Opposing counsel made no such remarks and Major Beeks knows it.

Defense: The inference was --

Trial Judge Advocate: Maybe you felt the shoe fit, but I haven't made such a remark.

Law Member: The entire record of the testimony of this witness is before the Court with the entire statement he made to Major Beeks prior thereto at some other date. Any further questions, Major?

Defense: No further questions.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Now, will you turn to the Court and tell the Court just exactly what you meant when you spoke of going to your barracks in answer to Major Beeks' question. At what particular time did you mean you went to your barracks?

A Well, Major Beeks, I told when he came out there, I say, "Major", I said, "I don't know anything about this case. I have been overseas and I wasn't down there long." I say, "I wants to be very straight what I tells you." I say, "I don't want to have anything to do with it". If I told him I didn't leave out of the barracks, I don't remember, 'cause when he first questioned me I didn't tell no lie. I know I told Colonel Jaworski I had been down in that area to look

at the sight.

Q All right. Now, I want to ask you did Major Beeks warn you of your rights as a witness under Article of War 24 before he questioned you?

A No one has read me no Article of War.

Defense: There wasn't any need to.

Law Member: Does that answer your question?

Trial Judge Advocate: It sure does.

Q Now, one other question to make certain we understand you. Now at what particular time after work, after you finished your work, at what particular time did you go to the area? Did you go there from work or did you go there after you had gone to your barracks and from the barracks?

A When I first got out of the barracks, if I am not mistaken, they was jawing about Private Sylvester Campbell having too much G.I. issue clothes, or not enough, and we was laughing and jawing, and I had occasion to go out to the latrine and on my way back to my barracks I heard the noise and I went on down there.

Q All right.

A I don't remember telling him I didn't go, 'cause you know when you first questioned me I told you I was there.

Q I know what you told me, but Major Beeks questioned you about what you told him. Do you have any recollection of ever telling Major Beeks you didn't go down to that area at all?

A No, sir.

Trial Judge Advocate: That is all.

Defense: I have no more questions.

President: Any further questions by the Court?

Major MacLennan: I have one.

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q Do you recall the date that you replied to questions of Major Beeks?

A No, sir, I don't remember the date.

Q Will you tell me whether it was before you answered questions of Colonel Jaworski or not.

A When I talked to Major Beeks?

Q Yes, sir, before that or afterwards? Who talked to you first?

A Colonel Jaworski.

Q I see. That is, Colonel Jaworski talked to you first?

A Yes, sir.

Major MacLennan: Thank you very much.

Questions by Law Member:

Q And how long was it after that Major Beeks talked to you?

A I don't exactly know, but I think it was two or three days later.

President: Any further questions? There appear to be none. The witness will be excused.

There being no further questions, the witness was excused and withdrew.

President: The Court will take a five minute recess at the present time, and reconvene at the end of the recess and sit through until approximately 3:30, and then recess for the day. Any of the accused that want to leave the room for any purpose whatever, you can make arrangements to let them out, Captain Yarnall. Well, take them all out, Captain, but try to get them back in five minutes.

The Court thereupon recessed at 2:45 p.m., and reconvened at 2:55 p.m., 2 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Yes, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

Trial Judge Advocate: Let the record show each of the accused

is present, that all members of the Court and personnel representing the accused and personnel of the prosecution are present.

The reporter was also present.

Trial Judge Advocate: If the Court please, I have decided to change my order of proof a little and call a short witness first.

T-4 Robert E. Walsh, Medical Detachment, Fort Lawton, Washington, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Have a seat, please. State your name.

A Technician 4th Grade Robert E. Walsh.

Q Your organization, please.

A Medical Detachment.

Q And your station.

A Station Hospital, Unit 2

Q Sergeant Walsh, do you know where the obstacle course is at Fort Lawton back of the Italian area?

A I do, sir.

Q State whether or not you were ever called to that area for the purpose of taking a body away in an ambulance?

A I was, sir.

Q Do you remember going to that area on or about the morning of August 15, 1944?

A Yes, sir.

Q Now, about what time of the morning was it?

A Approximately 7:30, sir.

Q And how did you go there?

A In an ambulance, hospital ambulance.

Q Where did you park the ambulance?

A Parked the ambulance by the beach.

Q You parked the ambulance by the beach?

A Yes, sir.

Q All right. From there did you see a body suspended from a cable?

A Yes, sir.

Q Was that body taken down in your presence?

A It was, sir.

Q Will you give the Court a brief description of the body that was taken down?

A Yes, sir. He was a man a little bit above average height. He wasn't real stockily built. He had on a shirt with an Italian insignia, a badge, and the badge was slightly torn.

Q You say an Italian insignia. What did it say on that insignia.

A Had the word Italy on it.

Q What position was that body in at the time you saw it?

A It was hanging from a rope, sir, from a cable stretched across a small ravine.

Q What, if anything, was done with that body?

A It was examined by the Medical Officer. He instructed us to cut it down.

Law Member: What was that last?

Trial Judge Advocate: He instructed us to cut it down.

Law Member: Talk louder, Sergeant. It is difficult to keep straining our ears to hear you.

Q Was or not the body taken down at that time?

A It was, sir.

Q And what was done with it?

A It was put in an Army blanket and we carried it down to the ambulance and put it into the ambulance.

Q And after it was placed in the ambulance where, if anyplace, did you take it to?

A Took it back to Unit 2.

Q What is that?

A That is the station hospital.

Q And what, if anything, did you do with it there?

A Well, as far as I know they left it in there, as I went back to duty.

Q That is as far as you know anything about the body?

A That's right, sir.

Trial Judge Advocate: You may have the witness.

Defense: No questions.

Trial Judge Advocate: That is all, Sergeant.

President: Any questions by the Court? There appear to be none. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Captain John Hunt Walker, Medical Corps, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Please give us your name, your rank, your assignment and your station.

A John Hunt Walker, Captain, Medical Corps. Primary assignment is Chief of X-Ray, Station Hospital, Fort Lawton; Secondary assignment, Pathologist.

Q Captain Walker; state whether or not you had occasion on the morning of August 15, 1944, to view the body of an Italian?

A I did.

Q Where was that, Captain Walker?

A I first saw the body of the Italian in an ambulance at the station hospital, Unit 2.

Q Station hospital, Unit 2, where?

A Immediately behind the Administration Building.

Q All right. And at what station? Fort Lawton?

A Fort Lawton.

Q All right. Now at that time how long did you view the body?

A Approximately four, five minutes.

Q Was the person, whose body you viewed dead or alive?

A He was dead, sir.

Q And can you state approximately what he looked like or give us some general description of him?

A May I refer to my notes?

Q Yes, you may refer to your records.

A Notes from my protocol, as taken at the autopsy, the body is that of an adult male, approximately 70 inches in height, and weighing approximately 155 pounds, and appearing approximately 30 years of age.

Q Can you give us any description of how he was attired?

A At the time I saw him there was a white sheet pulled over him, which I pulled back. He had on, as I recall, white shorts and a white undershirt.

Q All right. And was there anything about his neck?

A Yes, sir, there was a rope around his neck.

Q Do you know Sergeant Walsh?

A No, sir.

Q Did you see the sergeant that just walked out of here?

A Yes, sir.

Q Have you ever seen him before?

A I have seen him around, sir, but I don't know him personally.

Q Now, at the time you viewed this body where was it when you first viewed it?

A In the ambulance.

Q In the ambulance. All right. Now after --

Defense: Counsel, I might say the defense is making no contention that the body examined by Captain Walker was not the same body that was brought in as testified to by the previous witness.

Trial Judge Advocate: All right.

Q Captain Walker, did you after that time have occasion to again see this body, the same body you saw in the ambulance?

A Yes, sir.

Q And where was that?

A At the Wrights Undertaking Parlor in Seattle.

Q Seattle, Washington. Did you or not perform an autopsy on that body?

A I did.

Q Now, Captain, how long have you practised medicine?

A For four and one half years.

Q And are you licensed in any state to practice medicine?

A Yes, sir. State of California and the State of Washington.

Q And where did you have your medical education?

A University of Michigan.

Defense: I will admit the doctor's qualifications without your going further.

Law Member: All right. The doctor's qualifications are admitted.

Q Now, Captain, about how many autopsies have you performed?

A I don't know the exact number. I have helped and witnessed approximately 100, and been the autopsy surgeon in approximately another 100.

Q I see. Now, about what time of the morning or what time of the day did you first see this body?

A About 8:30, 0830.

Q About 8:30. Now, did you in connection with your examination

of that body seek to determine about how long that person had been dead?

A Yes, sir, as much as I could at that time.

Q Yes, I realize. And what was your determination as to the approximate length of that person's death prior to the time you saw him?

A My estimation was between eight and nine hours, although that has to be qualified. The examination of a body entails determining the amount of rigor mortis present, the amount of body heat present, the condition of the sclera or the covering of the eyes, and the position of the body at the site. I didn't see the body at the site of the accident. From these characteristics an estimation may be made which is only approximate of the time elapsed between death and the time of examining the body.

Q What is your best judgment from the examination you made of the time that did elapse from the time of death until your examination of the body?

A About eight and one half hours.

Q And you saw the body at what time?

A 0830.

Q 8:30. All right. Now, in connection with the autopsy that you performed, Captain Walker, did you or not determine the cause of that person's death?

A Yes, sir.

Q And what was your determination?

A Strangulation.

Q Strangulation?

A Yes, sir.

Q Were there any broken vertebrae in that body?

A No, sir.

Q Was there any bruise or any confusion such as would come from a blow on that body?

A No, sir.

Q Were there any scratches or anything of that nature on that body?

A Yes, there were multiple abrasions and scratches of the front of the legs, both legs and thighs up to about the level of his shorts -- where the shorts came down on his thighs.

Q Did you or not notice whether there was any dirt on that body?

A There was dried dirt on the soles of the feet and some dried dirt along the anterior surfaces or the fronts of the legs.

Q Along the front of the legs. All right.

A It was gray clayish type.

Q A gray clayish type of dirt. Generally what type of rope was that you saw around the neck of that body?

A Braided hemp rope. I would say it was approximately, oh, eight millimeters in diameter.

Q I will ask you to examine Prosecution Exhibit 40 and state to the Court whether generally this was the type of rope that you saw around the body of the person that you examined.

A That was approximately it.

Q Speak out a little louder.

A Approximately so, yes.

Q Now, was the body of this person, or was the person whose body you performed this autopsy on, identified for you by anyone at the funeral home for your records?

A He was not identified at the funeral home.

Q Where was he identified for your record?

A He was identified by one of the Italian Service Officers, I believe -- the American Officer in Charge of the Italian Service Unit -- with several other Italians.

Q Do you remember the name of the American officer?

A If you brought it to me, but I don't remember now.

Defense: You can lead him, if you want to.

Q To refresh your recollection, was it or not Captain Beckman?

A I would have to see Captain Beckman to be sure.

Q Okay. Well, you say he was the Officer in Charge of the Italian Service Company?

A I believe so, yes, sir. He was one of the officers with them.

Trial Judge Advocate: You may have the witness.

CROSS-EXAMINATION

Questions by Defense:

Q Captain, did you notice any old scars about the man's body that you examined?

A Yes, sir, he had a scar on his scalp at the vertex, the right vertex of his scalp.

Q Well, would you indicate to the Court just where that was.

A I will have to read this from here (indicating personal notes).

Q Yes, you may refresh your recollection.

A There is an old healed five centimeter scar of the scalp at the right side of the vertex, indicating that as about in this

position (Illustrating).

Q That had existed for some period of time?

A This was an old healed scar; white scar tissue.

Q Doctor, the period of time rigor mortis will set in even under identical positions is a variable factor, isn't it?

A Yes, sir.

Q In other words, you can take two people and they will meet death under almost identical circumstances and rigor mortis may set in in one in a matter of approximately, say, six hours and in the other it may take as long as eight hours?

A Yes, sir, depending on body build and other factors.

Q Yes. And to take another factor, a man who has been prior to death, immediately prior to death subjected to considerable physical exertion, the period in which rigor mortis would set in with him would be entirely different, wouldn't it?

A It may be.

Q Or it might be?

A It may be.

Q Well, isn't it a general rule, Doctor, that when a body has been subjected to a good deal of physical exertion rigor mortis sets in more quickly than when it hasn't?

A Yes, sir.

Q And isn't it also the general rule that the period normally in which rigor mortis will set in after death is from approximately five to eight hours; isn't that what the medical --

A I believe the authorities state a little longer than that, Of course, it can be, it can occur, immediately and it may not occur for twelve hours. I would say from very shortly after death until twelve hours, that much time may elapse.

Q Yes. One further question. Were the types of scratches that you found on the deceased's legs the type of scratches that could be obtained from walking through underbrush or undergrowth?

A I wouldn't say that they were obtained that way; I would say that it is possible.

Q It is possible they could have been?

A It is possible, yes.

Defense: That is all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Could or not those types of scratches be obtained from being dragged through underbrush?

A Yes.

Law Member: Not if they were; could they.

Q Could they?

A Yes, sir.

Q Now, Captain, one other question. Your records do indicate the name of this body, the person?

A Yes, sir.

Q As identified?

A Yes, sir.

Q Will you give that to the Court.

Law Member: Is there going to be something else besides this?

A I don't know how you pronounce the first name. Olivetto is his last name.

Q Olivetto is his last name. All right, spell the first name.

A The first name, as I have it, is G-u-g-l-i-e-l-m-o

Trial Judge Advocate: I believe that is all.

RECROSS-EXAMINATION

Questions by Defense:

Q One further question. You don't want the Court to understand, Captain, in this case that you are testifying definitely and positively the deceased died exactly eight-nine hours prior.

A No, sir. That is an estimated time of death. You can take one hour before or after 2400 as far as that is concerned.

Q Well, even if he had been subjected to a great deal of physical exertion it might have been a good deal shorter than that prior to death -- physical exertion, I meant to say?

A If he had a great deal of physical exertion, possibly.

Defense: That is all.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Doctor, in determining the estimated hour of death, when a pathologist sees the body you say you take into consideration the film over the eyes, the sclera, the degree of rigor mortis, What was the degree of rigor mortis in the body at 8:30 the next morning when you saw him?

A It was complete.

Q Complete. Now, I assume that the estimate made by you is the proper and approved practise by all pathologists in determining, in estimating, the length of time that a certain body has been dead?

A Yes, sir.

Q Is that purely an estimate or is it based upon a reasonable degree of certainty?

A It is purely an estimate.

Law Member: That is all.

Trial Judge Advocate: I believe Major Crocker has some questions.

Questions by Major Crocker:

Q Captain, at the time you examined the body at about 8:30 in the morning, at that time did you make an estimate of the time of death?

A Yes, sir, I made my own estimate at that time. The estimate is further developed or confirmed in your own mind, to my own mind, at the time of autopsy, of course. You review what you have seen previously and what you see at the time of autopsy, although there was very little changes which occurred between the time this man was seen by me the first time and the second time when I saw him several hours later.

Q Did you or not make some record or notation at that time of your judgment on that point?

A No, I made no notations. In my own mind.

Q At that time had you heard about any unusual incidents at Fort Lawton the night before?

A Yes, sir.

Q Had you discussed that situation with anybody before you made this examination?

A Only I reported as Officer of the Day, incoming Officer of the Day at Station Hospital, Unit 1, Fort Lawton, and was told by the Post Surgeon there had been an occurrence on the post the night before and a man had been found hanging on the post. So that was as far -- the information I received -- and that the body was down at the hospital, Unit 2, and I should go down and examine the body.

Q Had you been told anything about the time of those events?

A Yes, sir, I believe I had. I was told that it had occurred around 11:00, I believe.

Q By the incoming officer --

A By the outgoing officer of the day.

Q Did the officer of the day come to see you before you made

that examination?

A The officer of the day, the incoming and outgoing officer of the day, report together, sir, to the Surgeon.

Q You are referring to the medical officer?

A Medical Officer of the Day, yes, sir.

Major Crocker: I see. I think that is all.

Questions by Law Member:

Q Well, the fact that you had heard about this incident, that didn't have any bearing, did it, upon your estimate of the number of hours that this body had been dead?

A Unconsciously it may. Any pathologist, or anything in medicine, a man is entitled to have all the facts before him before he makes any statement.

Q Well, that may be true, Doctor, but your estimate of eight and a half hours was based upon the condition of that body?

A Yes, sir, that's right.

Q In other words, if you had heard that this incident took place at 9:00 you wouldn't say that the body had been dead eleven and one half hours?

A No, I believe I would still have made the same statement.

Q It would be based upon certain factors which all pathologists take into consideration in determining the length of time that a body has been dead?

A That is correct.

Q And is that the proper and approved practice in the medical profession?

A Yes, sir; to take the usual and accepted conception of what the general knowledge is. I have quotes, if anybody would like quotes, of what recognized pathologists or medicolegal men would think as to the estimation of approximate time of death. Webster quotes in his medicolegal book on "Toxicology and Legal Medicine," I believe it is, that only an approximate time may be given; that it may vary two hours one way or the other, or more.

Q In other words, in this instant case, Doctor, from what you examined he might have died at 2:00 or he might have died at 10:00?

A He could have, yes, sir.

President: Any further questions? If not, the witness may be excused.

There being no further questions, the witness was excused and withdrew.

President: The Court will recess and reconvene at 9:00, Monday morning.

The Court thereupon recessed at 3:20 o'clock p.m., 2 December 1944, to reconvene at 9:00 a.m., 4 December 1944.

LEON JAWORSKI
Lt. Colonel, J.A.C.D.
Trial Judge Advocate

Fort Lawton Staging Area
Fort Lawton, Washington
December 4, 1944

The court met, pursuant to adjournment, at 9:00 o'clock, a.m., all of the personnel of the court, prosecution, and defense, who were present at the close of the previous session in this case, being present.

The accused, reporter, and interpreter, were also present.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused is present, and all members of the Court are present, that the personnel representing the accused, as well as the personnel representing the Prosecution are present.

Chief Warrant Officer Giovanni Prinzi, 28th Italian Quartermasters Service Company, a witness for the Prosecution, was sworn and testified as follows: (Testimony is through interpreter.)

Interpreter: He said, "I swear to tell the truth, and nothing else but the truth."

Trial Judge Advocate: All right, tell him to have a seat.

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name, your grade, your organization, and your station, please.

A Prinzi, Giovanni.

Q Now, Prinzi is your last name, and Giovanni is your first name?

A Yes; Giovanni Prinzi. Chief Warrant Officer, 28th Italian Quartermasters Service Company, stationed at Tacoma, Mt Rainier.

Q Did you or not know Guglielmo Olivotto during his lifetime?

A Yes.

Q How long did you know him?

A About four or five months. The first day he arrived in our Company.

Q Did you or not have occasion on the morning of, ---did you or not have occasion on August 15, 1944, to go to the Bright's Funeral Home in Seattle for the purpose of making an identification of a body?

A Yes, I did. I went to this place.

Q Now, did you or not view a body at that time?

A Yes. I saw Olivotto.

Q Well, just strike the last of that answer and just show "Yes." Now, whose body was it that you viewed at that time?

A It was the body of Private Olivotto.

Q What is his given name?

A Guglielmo.

Q Will you tell the Court what the body looked like at the time?

A The body was lying on a sort of a table facing up towards the ceiling and was covered by, with a sheet. Capt. Beckman took the sheet off him, and I was able to note that Olivotto had a rope around his neck. Two ends of the rope were cut in the back and were lying on the sheet. And he had blood, which was clotted here (indicating) in this part here (indicating).

Q Are you positive that the body you viewed was the corpse of Guglielmo Olivotto?

A Yes, sir, without a doubt. Besides my recognizing him, because I knew him, Capt. Beckman also recognized him because Capt. Beckman had a photograph there, and recognized him also from the photograph.

Law Member: I think that is hearsay, but is there any question about this, Major?

Defense: As far as I know there is none.

Q Did you or not observe anything about the condition of the neck, jaws, of that corpse?

A The neck, I have already stated about, I observed those things were, and the face, all I could see was that he had the look of a dead man.

Q Was Olivotto at the time you saw him dead or alive?

A He was dead.

Trial Judge Advocate: Prosecution has no further questions, if it please the Court.

Questions by Defense:

Q What are your duties as a Chief Warrant Officer?

A I command a platoon.

Q Is that the duties you performed in the 28th Italian Quartermaster's Service Company?

A Yes, ever since I arrived at that Company.

Q Was Olivotto in your Platoon?

A No. He was in Lt. Bianco's Platoon.

Q Did you know him pretty well?

A Yes, because the first day he arrived in the Company he was assigned to me. However, when we arrived here at Fort Lawton, he was assigned to another Platoon.

Q Had Olivotto had any type of sickness during the time that you knew him?

A No.

Q Hadn't he been sent to the doctor at Fort Lawton?

A I wouldn't know that, I don't know, because that is something that pertains to the Company.

Defense: No further questions.

Trial Judge Advocate: Prosecution has no further questions.

President: Any questions by the Court? Witness may be excused.

Witness excused.

Trial Judge Advocate: If it please the Court, there are one or two stipulations that Counsel for the Defense, and Prosecution have entered into. I want to read to the Court that which has been entered into between counsel for the Defense and the Prosecution with respect to the damage, as estimated by the Post Engineer done to the buildings in question on the occasion in question. And the stipulation relates to what the Post Engineer would testify to on that point, without the necessity of bringing him back in.

Law Member: The accused enter into that stipulation?

Defense: I did not consult the accused. I did not know, if the Court please, whether it was required to or not. I have not stipulated those are the facts. My stipulation is limited to, if the witness were called, he would so testify.

Law Member: Subject to any objection by the Court the stipulations will be received.

President: Are there any objections by any member of

the Court? There appear to be none. The ruling of the Law Member will be the ruling of the Court.

Law Member: Are you going to mark that in evidence instead of reading it?

Trial Judge Advocate: I am going to read it, or, rather, would you rather I would do that?

Defense: No, that was one of the things in the stipulation that I would rather you didn't have going in before the Court as evidence. I would like to have it read just the same as if it were the testimony of the witness, if he were called.

Trial Judge Advocate: All right. I will read it, then, it will not be marked as an exhibit.

"It is stipulated by and between the Prosecution and the Defense that on the trial of the case of the United States of America vs. Nelson Alston, et al, involving charges of rioting in violation of AW89 and murder in violation of AW92, if Maj. George H McNay, Civil Engineer, Post Engineer, Fort Lawton, Washington, were present in Court he would testify as follows:

That the attached report of damage is a true and correct statement of the damage done to the buildings in what was known as the Italian area, Fort Lawton, Washington, as a result of the incident that occurred on the night of August 14, 1944, involving American Negro soldiers, and members of the 28th Italian Quartermasters Service Unit. It is further stipulated that the attached report may be read to the Court by the Trial Judge Advocate, and that the information contained herein may be received by the Court as if the witness had personally testified. Signed, Leon Jaworski, Lt. Col. J.A.G.D., Trial Judge Advocate, and William Beeks, Major, J.A.G.D. Defense Counsel."

Then on the next page, dated 16 August 1944, "Subject: Damage to Public Property. To: Headquarters, Fort Lawton Staging Area, Fort Lawton, Washington (1) Cost of repairs to damages caused during the night of 14 August 1944, in Buildings 713, 708, 709, and 710, are as follows:

Labor 32 hours, carpenters, \$39.04."

I will have the total on this.

"164 hours carpenter helper, \$15.84. 32 hours, painters at \$1.16, a total of \$37.12. 16 hours, truck drivers, \$17.60. 8 hours, laborers, \$6.96. Total labor, \$116.56. Material: 36 by 43 and 4 light sash, \$78.00. 10 by 12, ss glass, \$9.00. OD paint, 53 cents. Miscellaneous hard-

ware \$2.25. Putty, \$3.00. Lumber, \$4.50. Plasterboard \$4.32. Total material \$101.60. Total cost \$218.16."

I will take these back and I will leave them with the court reporter for the time being. Now, if it please the Court, there is another stipulation between counsel for the defense, and counsel for the prosecution, that they have entered into which relates to an official report of the United States Weather Bureau for the 14th and 15th of August. And it is stipulated between counsel for the prosecution and counsel for the defense that this is the official report of the United States of America, Department of Commerce, Weather Bureau Station, Seattle, Washington. For the 14th and 15th of August, at Boeing Field, Seattle, Washington, and at Sand Point, Seattle, Washington.

"From 10:30 p.m., August the 14th, until 12:30 a.m., August 15th." And then there is an additional part of that stipulation to the effect that this does not necessarily represent the conditions as they existed at Fort Lawton; that the weather conditions could have been different at Fort Lawton at the time covered by the report. And that there is no weather observer posted at Fort Lawton and that the exact distances from Boeing Field to Fort Lawton and from Sand Point to Fort Lawton are not known, but that such distances are between ten and fifteen miles. That is in substance the nature of the stipulation I am offering. I did not read it in full. I wanted to apprise the Court of the nature of the stipulation.

Law Member: Subject to objection by any member of the Court, the stipulation will be heard.

President: Is there any objection by the Court? There appears to be none. The ruling of the Law Member is the ruling of the Court. The stipulation will be heard.

Trial Judge Advocate: "United States Department of Commerce, Weather Bureau, Seattle, Washington, November 25, 1944. As the custodian of the records of the United States Weather Bureau filed at Seattle, Washington, I hereby certify that it appears from such records that on August 14 and 15, 1944, the following weather conditions existed at: (a) Boeing Field, Seattle, Washington, 10:30 p.m., thin high broken clouds, scattered clouds, at 8,000 feet." When I said 10:30, I should have said August 14th. "Scattered clouds at 8,000 feet, visibility over ten miles wide. Wind southwest 11 miles per hour. 11:00 p.m., scattered clouds at 2400 feet. Visibility over ten miles. Wind south southwest 13 miles per hour. 11:30 p.m., scattered clouds at 2500 feet, visibility over ten miles. Wind south southwest 11 miles per hour. Cloud direction southwest. Clouds coming from the southwest. 12:00 p.m. overcast measured at 1400 feet. Visibility over ten miles. Midnight, wind south, 14 miles

per hour. 12:30 a.m., overcast, measured at 1400 feet, visibility over ten miles. August 15, ---" Now, wait a minute. That 12:30 a.m., was August 15th, of course. "Visibility over ten miles, wind southwest 12 miles per hour." That is completed as far as Boeing Field is concerned. Now, the Naval Weather Station, Sand Point, Seattle, Washington:

"10:30 p.m., August 14th, scattered clouds at 7500 feet, visibility over ten miles. Wind southwest six miles per hour. 11:30 p.m., scattered clouds at 7,000 feet, visibility over ten miles, wind south southwest, 7 miles per hour. 12:30 a.m., August 15, overcast measured at 1300 feet, visibility 7 miles, wind south 7 miles per hour. Definitions: Scattered clouds, 0.1 to 0.5 of the sky is covered broken clouds. 0.6 to 0.9 of the sky is covered. Overcast, more than 0.9 of the sky is covered. Visibility: A measure of the transparency of the atmosphere not necessarily affected by the presence or absence of light. Moon rise, moon-set and sunset. Sunset, August 14, 8:25 p.m. Moon rise, August 14, 2:04 a.m. Moon set, August 14, 5:57 p.m. Moon rise, August 15, 2:54 a.m. All the time is Pacific War time. Signed Perry R Hill, Meteorologist in Charge."

Now, that is the stipulated weather report for August 14 and 15, at the hours just read, and as a part of that stipulation it is further stipulated that this weather report does not necessarily represent the conditions as they existed at Fort Lawton.

That the weather conditions could have been different at Fort Lawton at the time covered by the report. That there is no weather observatory post at Fort Lawton. That the exact distances from Boeing Field to Fort Lawton, and from Sand Point to Fort Lawton are not known, but that such distances are between ten and fifteen miles.

Now, if it please the Court, the Prosecution is not far from resting in this case. Prior to resting, however, I feel it necessary to report to the Convening Authority the status of the matter at this time, and I have in mind a request to present to the Convening Authority relating to a matter that lies solely within his power to act upon, and it will become necessary for me to confer with him. I would ask the Court, therefore, to probably adjourn until the afternoon hour of convening.

In that way, I can proceed to the Port and I can confer with General Denson as I had planned to. I might say that I am informed that counsel for the Defense has in mind asking for some time that he feels he can devote to preparatory matters that will in the end expedite the proceeding and the loss of time that will be incurred now by adjourning until 1:30 will not be misspent because we would be adjourning anyway at this time

in all probability.

Law Member: You haven't any objections?

Defense: I do have no objections, if the Court please. I do want to call the Court's attention to one matter before they rest the case and that is at the request of the Defense that the Court visit the premises in this case during the night-time.

Trial Judge Advocate: Yes. I had a note here to do that before I finally rested. I wanted the Court to do that, to visit those premises during the night time and the place that has been described as the scene of the hanging. I know it is a little difficult for that to be done at this time for the premises are muddy - because of the weather conditions. They should be somewhat more favorable. Certainly, if it has rained to any extent I would not impose upon the Court a visit to that particular area because it would be a very muddy and difficult place to negotiate.

On the other hand, I feel that, certainly, prior to a time when this case will come to a conclusion, at least, let us hope that will be true, there will be some day when it will not have rained, and I think it will be much better if it could be done at that time.

Law Member: As has been previously stated the Court fully intends to visit the scene of the hanging and also visit the Italian area and the territory generally represented by Prosecution Exhibit 2 before the case is closed. I just wanted to hear from both sides whether that is absolutely necessary, that that be done before conclusion of the Prosecution's case?

Trial Judge Advocate: Oh, no, I don't think counsel feels that way.

Law Member: You have the assurance, counsel, that the Court is going to make those two inspections. The weather today is very much like the last time, Major Beeks asked the Court to go down there.

Defense: Well, I want that clearly understood for the record, that the Court's visit, when they visited it, the time was selected for the visit by the Court and was not one of Defense's selection.

Law Member: Well, anyway, the Court could not go today because it is raining hard and I can't see where it is absolutely necessary that those inspections be made prior to the closing of the entire case. Do you, Maj. Beeks, see any particular reason?

Defense: Well, of course, at the close of the Prosecution's case, the Defense will have some motions. There is a question in my mind if it might be helpful to the Court in passing on those motions.

Law Member: Well, that might hold up the closing of the Prosecution's case indefinitely here in Seattle at this time of the year.

Defense: Oh, on the whole, I don't believe, if the Court please, that it would be prejudicial to the defense in any way if the Court postponed its visit to the premises until after the Prosecution has rested. I have the Court's assurance, however, that at some time the Court will visit the premises?

Law Member: There isn't any question about that, Major.

Trial Judge Advocate: If possible, it would be well for the Court to visit when conditions prevail that are similar to the conditions that prevailed that night.

Law Member: You have our assurance, Major Beeks, that we will make this inspection, not only that, but we will walk down this alleged lane to that tree. But unless it is strenuously urged at this time that the closing of the Prosecution's case await our inspection, I believe we could go along and I assure you we will make the requested visitations of these premises.

President: Subject to any objection by any member of the Court, Court will adjourn until 1:30 this afternoon and the request of the Prosecution will be granted. Any objections? There appear to be none.

The Court will be in recess until 1:30 p.m. this afternoon.

The Court recessed at 9:45 a.m. and reconvened at 1:30 p.m., as follows:

AFTERNOON SESSION

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused are present, and that all members of the Court are present, and that the personnel representing the accused are present, as well as the personnel representing the Prosecution.

Now, if the Court please, on authority that I have asked for and have received from the Convening Authority, I wish to enter a nolle prosequi to the accused Private First Class Milton Bratton.

Defense: if the Court please, at this time the accused Milton Bratton was arraigned before this Court, I think on the 16th of November. He has been present in court ever since during all of the time that the Prosecution has presented its case and now the Prosecution is complete insofar as the production of evidence before the Court is concerned. I think the Court should go farther than that, and I ask the Court to enter a finding of Not Guilty as to this accused, Milton Bratton, and I am satisfied that this is the only way that he can be properly protected from any further prosecution in this matter.

Law Member: What have you got to say about that, Colonel?

Trial Judge Advocate: I may say that I don't agree with the statement that that is the only protection he has. It would not be proper for the Court to enter a finding of not guilty when the Prosecution is not rested. The action that is now taken by the Prosecution is well recognized in Military Law. It is an act that the Prosecution has a right to perform at any time it chooses upon authority granted by the Convening Authority. It is a matter I will say very frankly that is not discretionary with this Court. The Convening Authority gives authority to enter a nolle prosequi. It is a disposition that, insofar as this accused is concerned is final. The protection that the accused has is such as is afforded him in law. I, personally, am not asking the Court to pass on the limits of that protection, but I think it is complete.

I can say to the Court further, that there would be absolutely no purpose in the Prosecution entering this nolle prosequi if there were any intent to at any time file any other charges.

Frankly, if the same character of charges were filed, I think the accused would have his complete defense to it in this matter. But that is neither here nor there. It is not necessary for the Court to determine that nor is it necessary for the Defense to determine that. Under the Manual of Courts Martial a nolle

prosequi can be entered at any time either before or after arraignment. If the Prosecution were resting and the Court were then called upon to determine whether or not the evidence was sufficient, the, of course, counsel's request would be timely. As it is now, it would be wholly irregular to attempt to find the accused not guilty. So we ask the Court at this time to recognize the authorization of the Convening Authority exercising jurisdiction over these accused, who has given authority in this matter, and my records are open to the Court, if the court wishes to see them. I have made the request to the Convening Authority in writing and my Commanding General has given me that same authority in writing that I sought. So I believe any other action by the Court would be totally unauthorized.

Law Member: There isn't any doubt, counsel, but what the Court Martial Manual provides that a nolle prosequi may be provided or entered at any time either before or after arraignment, and while it also says that a nolle prosequi in and of itself is an acquittal then any further statement by me at this time pertaining to any future court action would be entirely obiter.

Subject to any objection by any member of the Court, the nolle prosequi is received.

President: Are there any objections by any members of the Court? There appear to be none. The ruling of the Law Member is the ruling of the Court. Private Bratton.

(Accused, Milton Bratton, comes forward.)

President: You are discharged from the jurisdiction of this Court and you will no longer be under trial by this Court. You will be returned to the guardhouse for such decision as the Military Authorities wish to determine for your future actions. You are no longer under the trial and jurisdiction of this Court. Do you understand?

The Accused: Yes, sir.

Trial Judge Advocate: May it please the Court, the Prosecution rests.

Defense: At this time, may it please the Court, the Defense moves for a finding of Not Guilty as to each of the accused named in the specification to Charge 1. The Defense further moves for a finding of not guilty as to each of the accused named in the specification to Charge 2. The Defense, further, at this time asks for a continuation of this case until Friday morning. We should like three days in which to prepare the defense of the case, and at the opening of Court next Friday morning, I would like also to preserve the right to argue the motions I have

just made. I will not argue them at great length.

Trial Judge Advocate: May it please the Court, I am not opposing some reasonable continuation that counsel wishes to have. I do feel, however, that three and a half days, Tuesday, Wednesday, Thursday, and half of Monday, three and a half days, is too long a period of time. I frankly had not felt initially that over a day would be required. However, Counsel had some different thought upon the matter, and thereupon I suggested two days. We talked this over and I thought we had more or less covered it. Now, I suggest to the Court that if even under a view of great liberality, that two and a half days would be satisfactory.

If something unforeseen develops to where Counsel would appear to need additional time, then the matter could be passed on, but personally I can't see anything occurring that would consume two and a half days, much less than three and a half days.

I am taking a rather broad view of this deliberately, because I am sure counsel would not be asking for it unless he could well make use of some time, and I am perfectly willing for him to have some time if he feels that is necessary. But I do suggest that we reconvene Thursday morning. If, in the interim, Counsel finds something has developed which requires more time, why it could be developed then. And even at that, that would mean we would just get in Friday and Saturday of this week. I do think that by Thursday, Counsel could find he was ready to proceed.

Defense: May it please the Court, I don't wish to take any more time than I actually need and when I talked with Counsel, I thought two and a half days would be sufficient. But in thinking this matter over,---I have forty-two men here now, and it is not like where you are dealing with one, when you have just one man, there isn't much trouble in going along with a trial. But I am gauging the amount of time I am asking for on the amount of time it took me to interview these men preliminarily and I may say to the Court, I have only had the opportunity of talking to these men about the merits of the case just once before, when the case started. I only had two weeks before the start of the case, and it took me that time, nearly all of three days, to interview the men preliminarily.

Since I have made the investigation myself I have not had the opportunity of talking to them at any detailed length at all. I don't anticipate that this time is going to be wasted. By giving me a little time now, in this proceeding perhaps we could go faster. If I can have a chance to get together with them I think we can go much faster. There will undoubtedly be some of these

men who will make unsworn statements. By having sufficient time to reduce them to writing, I think we can offer them to the Court without having to put the men on the witness chair and elicit the information out of him which would take much longer.

I am not trying to be unreasonable, if the Court please, and it takes time, but I do not wish more time than I will actually need. As I say, I, when talking to Counsel first, thought I could get by on two or two and a half days. But after thinking about it afterwards, I realize that I cannot do it in two and a half days.

President: Court will be closed and will move to another room. The accused and the Prosecution and the Defense will remain here.

(Court is closed and the Court en banc leave the court room, returning in a brief interval.)

President: Court will come to order. The Court has decided to grant the motion of the Defense and we will recess until 9:00 o'clock Friday morning.

Defense: I will say this to the Court. If it appears after I get into this, if it appears we can get through before this time, I will get in touch with the President and let the President know.

The court at this point, 2:05 p.m., December 4, 1944, was recessed until 9:00 a.m., December 8, 1944.

Fort Lawton Staging Area
Fort Lawton, Washington
December 8, 1944

The court met, pursuant to adjournment, at 9:00 o'clock, a.m., all of the personnel of the court, prosecution, and defense, who were present at the close of the previous session in this case, being present.

The accused, reporter, and interpreter, were also present.

The President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused is present and that all members of the Court are present, and that the personnel representing the accused are present, as well as the personnel representing the Prosecution.

President: I believe the Defense has a motion before the Court.

Defense: At the last session of the court the Defense moved for a finding of not guilty as to each of the accused named in the Specification to Charge 1, and the Defense also moved for a finding of not guilty as to each of the accused named in the Specification to Charge 2. In support of the Defense's motion for a finding of not guilty as to each of the accused named in the Specification to Charge 1, the Defense contends first:

That a violation of the 89th Article of War has not either been alleged or proved. Now, a riot is defined in the manual for Courts Martial, 1928, paragraph 147-C, page 162. (Reading) "A riot is a tumultuous disturbance of the peace by three or more persons assembled together of their own authority, with the intent mutually to assist one another against anyone who shall oppose them in the execution of some enterprise of a private nature, and who afterwards actually execute the same in a violent and turbulent manner, to the terror of the people, whether the act intended was of itself lawful or unlawful (McClain Crim. Law)" (MCM., 1928, par. 148c, page 162).

In other words the tumultuous disturbance which it speaks of must be to the terror of the people. That is an essential and basic ingredient of the offense.

Now, who are the people referred to in this; it would be the garrison at Fort Lawton that is alleged in the specifications. I think quite clearly that is correct. If the Court please, I refer to a case which I choose to call the Bamber Bridge Case, a riot case, which was decided by the Judge Advocate General in the European Theater, dated November 6, 1943.

In that case the Board of Review also had occasion to determine the meaning of the 89th Article of War. And in the course of their opinion, they refer to the legislative history of the Act. As the Law Member, and other members of the Court will know, when the intent or meaning of legislation is in doubt, it is one of the first principles of statutory interpretation, and it is the practice, that the legislative history of the particular statute in question be studied to determine what Congress had in mind when it passed the legislation.

In this Opinion,---and I am quoting now, it says, "The history of the 89th Article of War is revealed by the statement Brig. General Enoch H Crowder, Judge Advocate of the Army, before the Subcommittee on Military Affairs of the United States Senate on 7, February 1916. General Crowder in pertinent part stated:"

In other words they go back as to a time when a Judge Advocate of the Army went before the United States Senate Military Affairs Subcommittee and asked for the legislation which is now the 89th Article of War to be passed, and he says, "We come now to Article 89. 'Good order to be maintained and wrongs redressed.' Articles 54 and 55 (Code of 1874,) which it is designed to replace,---" meaning the 89th Article of War. "which it is designed to replace by this new Article, are perhaps the most archaic provisions of our Code. The existing provisions of our statute law were taken from the British Articles, and date in our law from 1775." And that is referring to the 54th and 55th Article, Code of 1874. "Their purpose is to protect civilians from disorderly and riotous acts on the part of the Military."

Consequently, it seems to me that the Act in question is intended for the protection of civilians and that is an essential element, that the Prosecution must prove, that the Acts were to the terror of civilians. But even assuming that the allegation in the Specification, which is, that the acts were to the terror of the Garrison at Fort Lawton,---even assuming their sufficiency,--- there has not been one iota before this Court, of evidence, that this Garrison at Fort Lawton, Washington, was in terror. Now, so much for the first ground.

The Defense further contends that the evidence is insufficient to establish guilt, particularly with respect to Riley Buckner, Lee Dixon, Emanuel Ford,--- am I going too fast for the Court? I will go back over it. Riley Buckner, Lee Dixon, Emanuel Ford, and Arthur Williams. Sylvester Campbell, James Coverson. Samuel Snow. Ernest Graham, and Freddie Umblance. Now, first, with respect to Coverson.

What has the Prosecution proved as to Coverson? The only testimony in this record with respect to Coverson is from the witness Daymond. One of the witnesses who was granted immunity in this case, stated that he heard the accused Coverson state to somebody else at a time not given, "I beat up an Italian unmercifully."

Now, that is absolutely the only thing that is in this record as to Coverson. In the first place, I think the law is pretty well settled that an accused cannot be convicted even on his own unsupported confession, and, certainly, the statement that is in the record falls very short of having the dignity of being a confession.

It is stated in the Manual for Courts Martial, paragraph 114a, page 115, "An accused cannot be convicted legally upon his unsupported confession."

Now, I want the Court to have in mind that the rule is different with regard to the admissibility of a confession in which it can be considered by the Court if there be other proof of the corpus delicti, but the rule is different on convicting an accused and he cannot be convicted on his unsupported confession, and all we have here at best is an admission.

And, it takes a lot of construction to even tie this up as an admission of guilt. That statement could mean many, many things. The man might have been bragging. And I don't think it is beyond the realm of probability that he was bragging. He hadn't been down there. He just wanted some of his own boys to think that he had, to make some such statement, to make them think he had done something. I know I have done similar things in the past and I assume that every member of the Court has done something like that in the past. We may have been required to go to some meeting, for example, and we didn't go, and then we talked to people about it afterwards as though we had been there, and just, we didn't want them to know we had not been there.

And it is stated also in Volume 2 of Wharton on Criminal Evidence, Vol 2, Page 1085, "An admission which, by its nature is less than a complete admission of guilt of the crime charged, is also insufficient of itself for that purpose."

"While a party's declarations or admissions are against him, the testimony of one who overheard them is to

be viewed with caution." 87ALR 697.

Now, the witness may have misunderstood what was said. He may have also altered the expression used so as to give an erroneous impression of what was meant. Now, "I beat up an Italian unmercifully," we don't know what the prior conversation was. Daymond admits that he was an eavesdropper and as far as the conversation is concerned, he did not hear the full conversation. For all we know, maybe they were talking about their life-long experience with Italians. They may have been talking about one of a hundred things.

He says, "I beat up an Italian unmercifully." Now, it does not tie in, he doesn't tie it in or indicate or tie it in with the proceedings which had taken place the night before and it is just absolutely insufficient to even have what would be regarded as substantial evidence in this case and unless there be substantial evidence the Court is well acquainted with the fact that a motion for a finding of not guilty should be granted.

I might call the Court's attention to another case here, which I have had called to my attention. That is Martin vs United States. The defendant was charged with the transportation of liquor and the liquor was found in his home and he admitted it was his and the Court held he could not be convicted on his own admission without supporting proof of his guilt.

Now, with respect to Buckner, Dickson, Ford, Williams, and Campbell, I will refer to the extent of the testimony against them in a moment. But the most liberal construction of the evidence present before this Court demonstrates conclusively that these men were only present where a crime was being committed and there is no evidence whatsoever that they were participants.

On this same Bamber Bridge Case, I referred to, the Board of Review busted the case as to one of the accused upon that very principle. I am going to read from that Opinion, if the Court please, on that.

"A summary of the evidence applicable to Wise's activities shows as follows:"

Now, Wise, was one of the accused that was charged with being a participant, a rioter, if you please, and who was convicted by the Court. I have that summarized here in one witness, in one paragraph, by Staff Sergeant William Byrd, bearing a summary of his testimony, which is as follows, and I am now quoting:

"Wise, was present on the street immediately exterior to the Hob Inn when Windsor and Ridgeway first attempted to make arrests and was in the group of soldiers who proceeded north on Station Road."

Ridgeway and Windsor were Military Police. "He was present at the situs of the fight between McKenzie and Edward Streets with the four military policemen, but left directly after the fight started. He was seen with no weapons in his hands nor was he seen to strike any of the Military Police."

Now, Private Albert F. Jackson, said as follows:

"Wise was at Hob Inn, and was standing outside when Windsor and Ridgway departed. Wise was in the group which proceeded north on Station Road and was present when the four Military Policemen returned, but was not seen by Jackson any more that evening. Wise was not present later when bricks were thrown."

And Capt. Paul T. Milnamow, M.C., said: "Ogletree, Adams, and Nunn were treated by the medical officer for injuries on 25 June 1943. No mention of Wise is made in his testimony, and he could not identify Wise in the court room."

And then, Corporal Roy a Windsor said, "Wise was present when the jeep containing the four Military Policemen stopped and the policemen dismounted but Windsor did not know if he had a weapon or object in his hands. Wise was just in the crowd."

The Board of Review goes on to say, "The statement of accused, Wise, should be considered in connection with the foregoing evidence. The declarations therein that bear any degree of inculpatory interpretation are as follows:" And here is what the accused, Wise, testified.

"Wise was at Hob Inn at the time Windsor and Ridgeway appeared."

Now, there had been a public disturbance at this Inn, which the facts show, in which the Military Police sought to make an arrest or at least, quite a disturbance. There was a resistance when the Military Police came and they needed their revolvers and they came back and met this crowd out in the center of the street and there was a couple of shots and the riot or fight ensued. This was a summary of Wise's own testimony:

"Wise was at Hob Inn at the time Windsor and Ridgeway appeared. He was in the Inn when Ridgeway went into it and addressed a soldier wearing a field jacket, that is, Nunn. Wise, then left the 'Pub' and was present on the outside of it when Windsor pulled his gun. When Windsor and Ridgeway left in the jeep, Wise and an A.T.S. girl walked north on Station Road accompanied by other soldiers and A.T.S. members. He saw the jeep containing the four policemen pass on its way south and then return and stop opposite the crowd of colored soldiers, of which he was one. He was present when one of the policemen

attempted to take into custody a colored soldier, and saw three policemen leave the jeep and walk towards the center of the street. He further saw one of the policemen hit in the forehead, and the police pulled their guns. He heard one shot and saw a soldier fall, and heard a second shot and saw another soldier fall. He then left and started back to camp."

Now, the Board of Review goes on: "With respect to the offenses alleged in Charge 2, and its Specification (assembling in a riotous and tumultuous manner to disturb the peace) and Charge 3 and its Specification (resisting the lawful arrest by the Military Police of Ogletree and Nunn) the evidence is wholly lacking that Wise in any respect participated in or aided and abetted in either the disorder or in resisting of the Arrest of Ogletree and Nunn. Likewise, there is not even an inference of preconcerted action or mutual understanding on his part. The repeated utterances, by the colored soldiers, to the effect that the Military Police would make no arrests on that night is not connected with Wise other than as an auditor. There is not a suggestion that he endorsed or approved such sentiments, and there is no evidence he uttered such remarks. By his own statement, Wise goes no farther than admitting his presence; he does not inculcate himself either as an active, aggressive participant, or as an aider or abettor.

"There is no evidence that he struck, attempted to strike, or menaced any of the policemen, or that he in any respect interfered with the arrest of Nunn and Ogletree. Neither is there any other evidence that by words he assisted or aided in the commission of the offenses. Construing the evidence, including his own admissions, most strongly against him, it stops short of incriminating him, and simply identifies him as a spectator at the time and place alleged."

Then the Board of Review goes on further to say:

"Merely witnessing a crime, without intervention, does not make a person a party to its commission, unless his interference was a duty, and his non-interference was one of the conditions of the commission of the crime; or unless his non-interference was designed by him and operated as an encouragement to or protection of the perpetrator."

And further: "But unless this abstention from interference removes a check which would otherwise prevent the commission of the crime, and is therefore equivalent to a positive act of assistance, the person so abstaining does not become a party to the crime. He may be indicted for his neglect and not assisting the officers of the law in arresting the offenders. But he is not indictable as concerned in the offense which

the offender in question commits. Hence, although a man be present while a felony is committed, yet, if he takes no part in it, and do not act in concert with those who committed it, he will not be a principal in the second degree merely because he does not endeavor to prevent the felony or apprehend the felon. Something must be shown in the conduct of the bystander which indicates a design to encourage, incite, or in some manner afford aid or consent to the particular act; though when the bystander knows that his presence will be regarded by the perpetrator as an encouragement and protection, presence alone may be regarded as an encouragement.

"It is not necessary, therefore, to prove that the party actually aided in the commission of the offense; if he watched for his companions in order to prevent surprise, or remains at a convenient distance in order to favor their escape, if necessary, or was in such a situation as to be able to readily come to their assistance, the knowledge of which was calculated to give additional confidence to his companions, in contemplation of law he was aiding and abetting. Mere cooperation without an understanding may not make a conspiracy."

And they quote or cite 1 Wharton's Criminal Law, 12th Edition, Section 246, pages 329, 334.

Then going on: "The mere fact that one present at the scene of a crime may be in sympathy with the person committing the same or may approve of his act will not render the former an aider or abettor. So, also, the mere fact that one present may negatively consent to the commission of the felony will not render him a principal in the second degree, and instructions using the word 'consent' have frequently been held erroneous."

And the citation is 22 C.J.S., Section 88b (3), page 160.

They go on further: "In the absence of preconcert, or, at least, of intent to aid and knowledge thereof on the part of the actual perpetrator of a crime, the mere presence of a person at the time and place of a crime, does not make him an aider and abettor, or principal, in the second degree, or principal under applicable statute, where he does not aid or abet, although he makes no effort to prevent the crime, and this is so even though he may mentally approve of it, and he benefited by it, unless he is under legal duty to prevent it. On the other hand where one's presence is by preconcert, he may be guilty as an aider and abettor, although neither by word nor by act does he encourage or discourage the commission of the felony."

And, there is no contention in this case that any of these accused are under any legal duty to prevent anything. The citation there was 22 C.J.S., Section 88b

(4), pages 160, and 161.

It goes on: "The mere presence of one at the scene of the crime does not make one an accomplice. Mere knowledge or belief that a crime is to be committed, or has been committed, and the concealment of such knowledge does not render a witness an accomplice unless he aided or participated in the commission of the crime. This is the general rule and is sustained by the majority of the cases."

Citing Underhill's Criminal Evidence, 4th Edition, paragraph 150, pages 227-228. See also CM 200047, supra; CM221019, supra; being Opinions of the Judge Advocate General.

They go on further to say, "The Board of Review, is of the opinion that the record is legally insufficient to support the findings of guilty with respect to accused, Wise, as to any and all of the charges and specifications."

Now, let us go back and see what the evidence shows with respect to the accused I have named.

Law Member: May I interrupt a moment there, Counsel?

Defense: Yes, surely.

Law Member: Have you any quarrel with me on the question of law? When I say that a person may be convicted of a riot even though he has not actively participated therein, if as a question of fact the Court finds that he was present to give aid if it was necessary and the active rioters knew he was there?

Defense: I have a quarrel with the Court to this extent. I think the Court clearly states the law, if there is a prior showing of preconcerted action. The part that the accused named took is a part of one of the conspirators to go down there for that purpose. Then, if he goes down there for that purpose he is guilty even though he takes no actual part in the perpetuation of the crime or felony.

Law Member: But isn't that a question of fact for the end of the case?

Defense: If there are no facts at this time from which the Court can infer, or, if there is not substantial evidence that was the case, it is the Court's duty at this time to enter a finding of Not Guilty. These accused are not required to prove their innocence.

Law Member: I understand that, Counsel.

Defense: The Prosecution must prove their guilt be-

yond a reasonable doubt.

Law Member: Well, pardon the interruption, but I wanted to get that straight. Go ahead.

Defense: That is perfectly all right. I want the Court to feel free at any time to ask me anything they desire. The only evidence in this case with regard to Riley Buckner, is first: one of the colored soldiers, Willie Ellis, who was also granted immunity, testified that he saw Buckner when he picked up Alvin Clarke, between the tent and the orderly room, and carried him from the area and Clarke testified he took him back up to the negro area.

That is absolutely all there is in this case. That at some time, and the time is not fixed with any degree of definiteness, Buckner picked up Alvin Clarke, who had been knocked out and carried him out of the area.

Clarke testified that Riley Buckner picked him up and took him back up to the negro area. There is absolutely no showing that Buckner was in the original conspiracy or had any preconcert with the original conspirators that went down there for the purpose of taking part in the riot. At the very best he was only like Wise in the Bamber Bridge Case, he was there, and he took no part in it, he saw an injured soldier, picked him up and carried him back to the barracks.

Now, can the court say there is any substantial evidence in this record at this time that Riley Buckner was one of the conspirators in that case who went down there for the purpose of participating in a riot.

Did the evidence of this case convince this Court beyond a reasonable doubt that he was a conspirator in this case? I don't see how it is possible. Now, the next man is Lee Dixon, and the only testimony in this record with respect to Lee Dixon came from the Italian, Sergeant Major Todde. That he saw him standing near Door E. That is all there is; there isn't any testimony he had a club in his hand, that he attacked anybody, or that he participated in the riot, or in the tumultuous disturbance in any respect whatsoever. He was exactly like the accused, Wise, in the Bamber Bridge case. He was a bystander who just happened to witness part of the offense. There is no testimony that he went down there or what he went down there for, or that he was one of the original conspirators, or that he took any part in the altercation whatsoever.

Now, the next one, if the Court please, is Emanuel Ford.

The witness Sims said he saw him outside of a

room, outside of Room Y, in the orderly room (indicating to map),

Law Member: Will you turn around that board so we can look at it?

Defense: Yes. And the witness went further on to specifically state that he did not see him doing anything.

Now, it seems to me that Emanuel Ford also certainly comes within the rule of that Bamber Bridge case.

Now, as to Sylvester Campbell, the only testimony against Sylvester Campbell, is the witness Thomas Battle. The testimony, incidentally, I believe, was so thoroughly discredited it is absolutely worthless. Battle testified that Campbell was in the area. He could not place him. He did not remember where, but he did say he had nothing in his hand, and was doing nothing. The witness, Murray, further admitted on cross-examination that he had told me when I talked to him that Sylvester Campbell was in his barracks all the time. So there is some testimony in the Prosecution's case which negatives Battle's testimony.

But let us assume just for the purpose of this argument that the witness Murray never testified here. We have a discredited witness, stating that he saw Sylvester Campbell in the area with nothing in his hand and not doing anything and the time and place was not fixed. If he is not merely a bystander, or at best a witness to the crime, I don't see how the court could put any other interpretation on that evidence.

Now, with reference to Arthur Williams, I believe it is the only testimony against Williams,---and I will concede it is somewhat stronger than against some of the other men I have named,---I still think it falls far short of being substantial evidence or, from which evidence the Court could find him guilty.

The Witness Todde said he saw him in the corridor. That is the only testimony against that accused or in any way connecting him with this crime. He was doing nothing and he was not armed and he saw him in the corridor, and, I think the witness Gresham further testified after the M.P.'s arrived down there he saw him outside the orderly room.

Now, with reference to Earnest Graham, the only evidence against Graham is the witness Battle. Battle testified on direct examination that he saw Graham somewhere around the corner of Barracks 709. On cross examination the Court will remember he completely and thoroughly discredited himself. He couldn't remember seeing Graham anywhere or didn't know where he had seen

him and admitted he had told me at the time that I had talked to him, that he had seen him up here on this path in the vicinity of Barracks 672.

In other words, I urge this motion at this time on behalf of both Graham and Umblance upon the theory that the only testimony against them is the witness, Battle, and that witness's testimony has been so thoroughly discredited that I feel satisfied in my own mind that this court could not in good conscience convict anybody upon its standing alone.

Now, this court is in a little different position than that of a court trying a case before a jury or on a motion of this kind, because the Court is also the trier of the facts, as well as the decider of the law.

I mean, this Court has a right, upon a motion of this kind to take into consideration the credibility of witnesses. And that is the only evidence against either one of those two men, is the witness Battle. And, having seen and observed the witness Battle on the stand, and the impression that he made, I say to this Court that there is no substantial evidence as to either of those two accused.

So much, if the Court please, for Charge 1.

Does the Court wish to act on these separately, or do you want me to go right ahead and complete it?

Trial Judge Advocate: Do you want the Court to act on it without hearing the Prosecution?

Defense: Oh, of course not.

Law Member: I think you better finish your motions and we will hear Col. Jaworski, then.

Defense: The specification to Charge 2, charges Col. Luther Larkin, Sergeant Arthur Hurks, and Private William G Jones, acting jointly and in pursuance of a common intent, did with malice aforethought, did feloniously and with premeditation kill Guglielmo Olivotto.

Now, the essential elements of proof necessary to establish the murder as set forth in the Manual of Courts Martial are stated in Paragraph 148a: "That the accused killed a certain person named or described by certain means, as alleged (this involved proof that the person alleged to have been killed is dead; that he died in consequence of an injury received by him; that such injury was the result of the act of the accused; and that the death took place within a year and a day of such act); (b) that such killing was with malice aforethought."

Now, what is the evidence in this case with respect to murder, so far? There is some conflicting testimony as to who jumped out of Barracks 709. For the purpose of this argument let us assume the evidence established without any equivocation whatsoever that it was Guglielmo Olivotto.

Then, he was taken by from three to five negro soldiers as far as the corner of tent 1. A witness standing in the vicinity of the latrine saw him go as far as Tent 1. He got down that far.

That, may it please the Court is all of the evidence so far as Olivotto was concerned, unless, you consider, he was found the next morning hanging by the neck some several hundred feet down in the obstacle course. There is some testimony, it is true, by an Italian soldier who was secreted over here in the area of the recreation hall in the woods and whose head was lying in a northwesterly direction,--- that at some time during the course of the evening someone went down in that vicinity with a flashlight, some one or more persons, and they were talking in the English language and they came back up there and he saw a car light from somewhere around in the vicinity of a highway from him.

That I think I have stated fairly is all of the evidence with respect to the death of Olivotto.

There isn't a single iota of evidence that any of the accused named in the Specification to Charge 2 committed any action whatsoever resulting in the death of Olivotto; that they, or any of them, premeditated any such action, or that they bore the deceased any malice of any kind or description whatsoever.

At the very best, and I say this in all sincerity to the Court, there is nothing more than a suspicion from the evidence that the death of Olivotto resulted from the act of colored soldiers. There is no evidence that the named accused or any one of them conspired with anyone else to effect the death of Olivotto.

Now, Counsel, will probably contend that there is some evidence that the named accused participated in a riot and that therefore the necessary malice aforethought,---and the Court must not forget that for a moment, that is a necessary and essential element of this crime which must be established by the Prosecution, that there was malice aforethought,--- and Counsel will probably contend that that is supplied upon the theory that the death arose out of the riot and that all participants there were are equally responsible for all acts committed by the rioters.

I have thought about that a lot, if the Court

please, and I think that argument is falacious and I say it is falacious because there isn't a scintilla of evidence that the rioters conspired or ever had the common intention of killing anyone.

There wasn't a soul killed down there and from all that appears from this evidence they went down there and at best and at worse to give them a beating.

Now, if somebody had been killed by the use of a club or by the use of a knife, that would be one thing. But there isn't anything from which it can be inferred in this case that at the time these men, whoever they may be, went down from barracks 719 and the barracks occupied by the colored soldiers, -- there isn't even an inference they had an intention of killing anybody by hanging them by the neck from a rope and there isn't a single particle of evidence of rioting outside of the Italian area.

I don't see how the Court can help but find that if the evidence did establish that there was a homicide of anyone, it was a collateral and independent crime and not a premeditated, or preconcerted act on the part of any of the three accused in the specification to Charge 2.

Law Member: May I interrupt you just a moment, Counsel?

Defense: Surely.

Law Member: Suppose we find that is a fact, isn't it then a question of law?

Defense: I say there is not any evidence at this time which amounts to substantial evidence that this crime was committed by these men or as an act arising directly out of the rioting.

Law Member: But it is not necessary as I understand it, Major, to prove intent to kill. If the rioters have attempted to do grievous bodily injury, isn't that sufficient to establish malice aforethought?

Defense: I was coming to this in a moment, Colonel.

Law Member: Pardon my interrupting.

Defense: Surely. If I may finish, I will be glad to give my views on it. I want the Court to keep this in mind, too. That for this case here presently at bar to be considered on such a basis as suggested by the Court would be at complete variance with the Specification as drawn.

They have not alleged a murder or a crime taking

place in that manner, and even if the Specification to Charge 2 had been drawn up to allege a crime from the rioting, for which the named accused would be responsible as rioters, the proof is short for establishing such a crime.

Whatever the rule may be in civil courts, in Military Law an intent to commit felony must be proved before the malice aforethought can be established.

It is an essential element in the crime of murder and it must be established and I submit there is no such showing. Rioting is only a misdemeanor, and it has not been made a felony by any statute of the United States.

Under the Manual for Courts Martial, paragraph 148a, Section 163, and that is the section that counsel cited in the paragraph with respect to malice aforethought, that is the paragraph that counsel gave some emphasis to when he originally read it to the Court, and it says:

"Malice aforethought may exist when the act is unpremeditated. It may mean any one or more of the following states of mind preceding or coexisting with the act or omission by which death is caused. An intention to cause death of, or grievous bodily harm to, any person, whether such person is the person actually killed or no (except when death is inflicted in the heat of a sudden passion caused by adequate provocation); knowledge that the act which causes death will probably cause the death of or grievous bodily harm to, any person, whether such person is the person actually killed or not although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not or by a wish that it may not be caused; intent to commit any felony."

Now, if the Court please, there is no showing in this case that any of these named accused,---and they are charged with a specific deliberate premeditated act of murder,---there is no showing---there is no showing that they intended to do grievous bodily harm or injury or harm to anyone, and the only way that malice aforethought can be shown is that they had attempted to do grievous bodily injury to anyone.

Now, even if the Court is shown that they had an intent to commit an act of rioting, they have only shown an intent to commit a misdemeanor and not a felony. That is all I have, if the Court please.

Maj. Crocker: Major, is it your contention Article of War 89 does not make rioting a felony?

Defense: Oh, absolutely. It is not stated under the 93rd Article of War that rioting is a felony. It is not stated to be a felony.

Trial Judge Advocate: No, you don't contend that under the 93rd Article of War?

Law Member: Well, how about intent to do grievous bodily harm? Suppose these people go down there armed with clubs and sticks and knives, can an attempt by the instruments used,---can an attempt be inferred by the Court, an attempt to do grievous bodily harm?

Defense: I presume under those circumstances it can, properly alleged.

Law Member: Now, is it your contention that at no time on an Army Post can a riot occur due to the fact the public there cannot be alarmed or terrified?

Defense: That is my contention. There are a number of other military offenses which could be charged and which these men could have been charged with, possibly, but rioting in the manner in which the statute is drawn, and for the express purpose the Judge Advocate General went before the Congress and asked for it,--- but it is not the intent to cover a situation of this kind.

Law Member: Well, I would like to take that case with us when we go into session, Major.

Defense: Yes, surely, I would be glad to furnish to you.

President: It is now ten o'clock. Do you want to take a recess or do you want to hear the prosecution and then take a recess?

Trial Judge Advocate: I would prefer to take a recess now, if the Court please.

President: We will take a 15-minute recess.

(At 10:05 a.m., a 15-minute recess was taken, after which proceedings were had as follows:)

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Is the Defense ready to proceed?

Defense: Defense is ready, sir:

President: Court will come to order.

Trial Judge Advocate: Let the record show that each of the accused are present, that all members of the Court are present, and the personnel representing the accused as well as the personnel representing the Prosecution are present.

Now, may it please the Court, without going into too much detail and taking too much of the Court's time, I propose to answer somewhat briefly each of the points that Counsel has made.

I will undertake to do so in the order in which Counsel made them, so that it will be a little easier for the Court to follow the presentation.

One of the first positions taken by counsel, which we of the Prosecution feel is clearly erroneous, is the argument that it is necessary that a Specification charge acts to the terror of the people. Of course, in a comment made by the Law Member, the Law Member somewhat put his finger on the pulse that shows the erroneousness, the fallacy of that contention, because when an incident of this kind happens in a camp or a garrison, it would be awkward for the Specification to charge it was to the terror of the people.

There is no question but what a riot can occur in a camp or in a garrison with the same effect, with just exactly the same terror as it can occur on the public streets of a city or a town. But I need not devote very much time to that particular contention because I have in my possession several specifications that were taken from approved cases, riot cases, if it please the Court, cases that have been passed on by the Board of Review of the Judge Advocate General's office.

And I have these models, these sample forms of specifications, and it was very interesting to me as Counsel was arguing that of the four model specifications that I have, only one,---only one charged that it was to the terror of the people.

Now, let us see what the others said. I will quote you first from the case of CM239730, Hall et al (reads from decision), and I might but read the closing words of the specification.

Defense: Would you mind giving me the dates, too, Counsel? We would appreciate having those.

Trial Judge Advocate: Well, unfortunately, I do not have the dates.

Defense: I think the first page shows it.

Trial Judge Advocate: No, I can give you the date they were taken and forwarded, that was on the 24th of August, 1944. (Reading from decision).

And the exact words used in the specifications were before the Court. The next one is CM 256663, Davis et al: (Reads from decision.)

Words analogous to the allegation that it was to the

terror of the garrison.

The next one is CM289843 Stewart. (Reads from decision.)

Now, you need not refer to these particular specifications to conclude that it is not necessary to charge it was to the terror of the people, because you would have an allegation that would be somewhat analogous, somewhat awkwardly framed and stated if it were necessary to say that something were to the terror of the people when you are referring to a Military installation. There is nothing magic about that. There is nothing so unusual about the phrase "to the terror of the people."

And, apparently, very good authority has considered that it is in better form to charge that it was to the terror of the garrison or to the terror of the personnel of the camp, or to the terror of the station.

Else, we would not have found that of these four specifications that were selected in writing cases from the Office of the Judge Advocate General, only one alleged it was to the terror of the people. So much for that.

There was again argued to the Court today that an accused cannot be convicted on his unsupported confession. That is a very elementary statement of law, one that is about as plain as the A, B, C's. But the construction and the interpretation that counsel gives that statement is at great and at wide variance with that which the Judge Advocate General has given it, not only the Judge Advocate General, but it is the plain variance, distance variance, with the very words of the Manual itself.

Counsel seeks to argue to this Court that those words mean that if you have a man's confession, or his admission, that you must have some other testimony, some other witness, that would come before the Court and say that man committed this offense. That without the aid of this other witness and, standing alone on the confession, you would not have sufficient evidence upon which to convict him. But there is a mistaken view as to what that means. When it says that you cannot convict him on his unsupported confession it simply means that you have got to have evidence of the corpus delicti before he can be convicted.

A man can come into the court and insist he committed an offense, and if you have no proof of the fact that such an offense was committed,---oh, not by him---but proof of the fact that offense was committed,---if you don't have proof of that, you can't convict him. If you don't know that such an offense was committed.

That is the protection the Court gives him, because

someone might come in and confess to committing a crime that might never have been committed. That has been done. But, just as soon as there is evidence of such a fact that such a crime has been committed---the evidence does not need to show who committed it---but just as soon as the fact is established that such a crime has been committed, and then you have a confession,---someone comes in and says he did it---your proof is complete.

Now, let us see if I am arguing this correctly. The Manual is very plain. Just read the Manual. Counsel, I am sure, just read the first sentence in this paragraph because, I am sure, he expected me to read the last of it, and here is how it runs:

"An accused cannot be convicted legally upon his unsupported confession. The Court may not consider the confession of an accused as evidence against him unless there be in the record other evidence either direct or circumstantial that the offense charged has probably been committed. In other words, there must be evidence of the corpus delicti other than the confession itself. Usually such evidence is introduced before evidence of the confession. But a Court may in its discretion admit the confession in evidence upon condition that it will be stricken out and disregarded in the event that the above requirements as to evidence of the corpus delicti is not met later. This evidence of the corpus delicti need not be sufficient of itself to convict beyond a reasonable doubt that the offense charged has been committed or to cover every element of the charge or to connect the accused with the offense."

And there are the words, so plain that anyone can understand it.

All right, "examples." Now, this makes it awfully plain.

Examples: "If unlawful homicide is charged evidence of the death of the person alleged to have been killed coupled with the evidence of circumstances indicating the probability that he was unlawfully killed will satisfy the rule and authorize consideration of the confession if otherwise admissible."

That is what the Manual says and I am sure that will satisfy the rule. But here is another very, very plain example.

"In case of an alleged larceny or in case of an alleged unlawful sale evidence that the property in question was missing under circumstances indicating in the first case that it was probably stolen and in the second case that it was probably unlawfully sold would be a compliance with the rule."

In other words, you need no more than evidence of

the fact that there probably was a theft, and upon having it shown that there probably was a theft, merely, there was property stolen, the property in the indictment alleged to have been stolen, and a confession, that confession has been supported by evidence which the Judge Advocate General says is sufficient to satisfy the rule.

All right. So much for that.

Well, it was brought up in connection with the accused, James Coverson,---well, let us just break that down to one or two instances cited in the Manual.

Suppose James Coverson were charged with larceny instead of with rioting. There is an abundance of evidence on that in this record. The record teems with it. Even Counsel, with his very able and astute partisan approach to all of these questions I think will concede to the Court that the evidence shows that a riot took place.

Now, suppose instead of having been a riot, he was charged with larceny and the proof that was brought before this Court showed that John Doe's trousers were stolen on a certain day. And, we brought John Doe in here and put him on the witness stand and had John Doe testify to the fact that his trousers were taken from his room on the date alleged in the specification, and that he did not give anyone permission to take them, and that certainly he didn't give the accused, James Coverson, the right to take them.

That is the establishment of the corpus delicti and then, we brought in Roy Daymond, the witness who connected James Coverson with this affair, and Roy Daymond took the stand and testified under oath that James Coverson told him that he took the trousers.

Do you mean to tell me that the evidence wouldn't be sufficient on which to base a conviction of James Coverson for the theft of those trousers? It just goes to show that when you take a rule and just merely consider it theoretically it will often lead you to an erroneous conclusion.

But, when you start applying that rule to a practical situation, it becomes rather plain and simple. Similarly, there is no question but what the evidence is sufficient as to James Coverson here.

The fact that the riot occurred cannot be doubted in the state of the present record. and the fact that there is testimony by a witness who said that James Coverson told him he beat one of these Italians unmercifully, that there is testimony to that effect is also not to be questioned.

And that because at this very moment, I pointed out to the Court that there is no reason, no reason on earth, for considering evidence insufficient, just because one witness connected an accused with this offense. That is all it takes.

And, it may be that a person much less guilty can be connected with six or seven witnesses who happened to see him, whereas only one witness, only one may have seen him, and he may have been the most guilty of all, if that is a term that is proper to be used, at least the Court knows what I have reference to.

The most culpable man down there may have been identified by only one witness, and it doesn't mean that he is any less guilty than the man who was identified by five or six witnesses. It doesn't mean that at all.

Well, now, Riley Buckner. What on earth,---the testimony here shows that Alvin Clarke got conked on the head early in the game. Alvin ran on down there and he was going to have his share in this terrific affair and he didn't manage to do much, somebody clouted Alvin, and then Riley Buckner, early in the game, carries him out and one witness saw him and placed him just outside the door of the orderly room. That is where he was picked up.

What was Riley Buckner doing there if he wasn't participating in this affair? The record is silent on his having done anything but participating in this affair, and the Court is entitled to draw an inference from the circumstances.

The other man, who saw him, he said, he is the man that picked him up. And that happened in the early stages of the riot. I will discuss that testimony in connection with the case Counsel quoted from so freely, but I want to take these individuals first that counsel has mentioned.

Now, of what value is it to argue to this Court that Dixon, on a motion of this kind, should be held not guilty when there is a witness who positively identified him. At the end of all of the evidence, after the case has been fully developed, it then becomes a question for the Court to determine whether or not the Court chooses to find that man Not Guilty, but at this juncture, with a witness who unequivocally identified Dixon, how can it be said he is entitled to have this motion granted?

The Witness Todde, said he was right at Door E. What was he doing there under the circumstances in this case?

Well, Emanuel Ford is in exactly the same situa-

tion. Here is a negro soldier who knew him well, who took the witness stand and testified he was near room Y. What was he doing there under the circumstances of this case?

And then, we find that reference is also made to Arthur Williams and that was a little bit of a surprise to me because even two of them saw Arthur Williams. A man definitely identified him as being in that orderly room and when Gresham came up at the time the M.P.'s arrived to break up the fight, who does he see in the orderly room but Arthur Williams. I don't know, perhaps I am having a little difficulty, but I don't know how the Court can ever be expected or be asked that testimony of that type should be cast aside and a man incriminated as thoroughly as he is, identified as much as he is, should be told, "You can walk free from this court room."

Well, we get to a discussion of Battle's testimony. I will concede that Thomas Battle didn't make the best witness that the Prosecution offered. But here is one thing that convinces me that the testimony of Thomas Battle is entitled to credence. If this Court will just stop to consider, Thomas Battle did not mention but one or two men who were placed in that orderly room or in the vicinity of that orderly room where Thomas Battle stated they were, who were not named by a number of other witnesses. Thomas Battle identified eight or nine, and of that number of eight or nine there were only one or two that were not identified by other witnesses as well.

Now, that is an important thing to remember, and I don't think it is fair to a witness, just because he is truthful enough to stand up and not tell a point-blank lie as he could have done, -- it would have been very simple for him to say he saw this man here and that man there, -- but he didn't want to do it. He didn't want to tell a point-blank lie and make his testimony as strong as it could have been if he had done otherwise. But simply because he is truthful enough not to want to do that, why discredit his testimony?

At this time the Court is only interested in questions as to whether there is substantial evidence connecting these accused. Together with all the inferences that the Court is entitled to draw, and from plain reading of the Manual at this stage of the game, there is no reason on earth for not finding the evidence sufficient to connect and keep the accused in this case.

Let us see what the Manual says on that, on motions for a finding of not guilty. We might as well take a look at it.

"If there be any substantial evidence,-- " Now,

I am reading from page 56 of this Manual, paragraph 7ld.

"At the close of the case for the Prosecution and before the opening of the case for the Defense the Court may on motion of the Defense for findings of not guilty consider whether the evidence before the Court is legally sufficient to support a finding of guilty as to each specification designated in the motion. The Court in its discretion may require that the motions specifically indicate wherein the evidence is legally insufficient. The Court will determine the matter as an interlocutory question. If there be any substantial evidence, which together with all reasonable inferences and all applicable presumptions fairly tends to establish every essential element of an offense charged or included in any specification to which the motion is directed, the motion as to such specification will not be granted. The Court in its discretion may defer action on any such motion as to any specification and permit or require the Trial Judge Advocate to reopen the case for the Prosecution and produce any available evidence. If the motion is sustained as to any specification the Court will forthwith enter a finding of not guilty of such specification and where necessary of the proper charge."

That is the entire paragraph on motions for a finding of not guilty.

Now, when you have a witness who has positively stated that these men were in this area, and he has been frank enough to admit that he could not testify or was afraid to testify exactly where he saw him, I hope that the Court will consider this based on what I have just read to the Court. There is a reasonable inference and the Court knows from the point where Thomas Battle said he stood that those men were not far from that orderly room.

Thomas Battle did not want to be positive or testify definitely, when he could have done so in order to bolster that testimony. He tried to say what he thought was fair, and his testimony should be given very full consideration for that reason. At least, granting the very best to the accused, we know they were in the vicinity of this orderly room and Barracks 709, because, he was standing along in here (indicating to map). Why should he say he saw those particular men if he didn't see them? He had nothing to gain by that. Let us not judge a man by the fact that he is a little uncertain about one or two things, and say that he is untruthful just because he did not want to be sure about one or two things. Let us see what is behind his testimony.

Why did Thomas Battle come into the court and mention the particular names of the men, whose names

he gave this Court, if he did not see them? Wouldn't it have been just as simple for him to mention the names of others? We know, of some seven of those whose names he gave to this Court, we know that they were given by others in this Court. Just check the testimony, and you will see there isn't any doubt but that Thomas Battle was trying to give the Court the full benefit of his own knowledge on the subject and nothing else, and just because he was not willing to stultify his conscience and say that he saw a man there at a direct spot is no reason for discrediting his entire testimony.

After the evidence is all in, if the Court then feels there is some doubt about one or two of the men he mentioned,--- if, after all the evidence is in, the Court feels the burden of proof has not been established, or feels that sufficient doubt exists to where an acquittal should be entered -- that is a different matter.

But I insist, if it please the Court, that at this juncture of the case the government has established a prima facie case, and that, if it please the Court is all that needs to be done up to this point.

Now, Counsel presents as his text and the basis for his motion, or the greater portion of it, what he calls the Bamber Bridge Case, and we shall reply to Counsel by using his own text.

If it please the Court, there are some very, very interesting expression in this Bamber Bridge case. I don't see how counsel overlooked some of them. But it is a very long opinion and I am sure that we could not have expected him to read it all, but I must read a little of it to the Court, and I must tell the Court a little something about it, too, or else I would not be doing my duty as a representative of the government.

I cannot, I cannot for a moment, say to this Court that the accused Wise in the Bamber Bridge case was in the same situation that any one of the accused sitting in this court room is in. This Opinion in the Bamber Bridge case shows that Wise under the evidence came up where? To a public store. In a city. And he stood there as an innocent bystander. The evidence in this case, if it please the Court, shows that each of the accused left their barracks, they left their barracks, Barracks 719 and 720, way down here (indicating to map).

No, they were not standing in Virginia Avenue. No, they were not standing there in Virginia Avenue when they were identified as to their participation in this matter. They were way down here, way down here, mind you, (indicating) where they had no business being. Way down here in this Italian area. That's

where they were, if it please the Court. You talk to me about a potential circumstance or about something that was not a preconcerted or deliberate effort or an attempt to participate in a riot,---if they didn't participate, if they didn't help them along, what were they doing down there? What were they doing down in that Italian area? these colored soldiers that had absolutely no business being there, and they knew it.

Of course, any man who can look up the authorities,--- and there are plenty of them,--- can find a different aspect to put on a situation. But, when you place yourself in the sort of a position of looking at this in the true light of the circumstances the conclusion is inexcusable that they were down there,---- not necessarily actively aiding, --- but, --- but they are down there, or were down there for the purpose of giving aid and encouragement, if it is necessary.

Does this Court doubt for one moment, or do you think for one moment that one, two, five, six, or ten of these men would have attempted to go down there by themselves and do everything that the evidence in this case discloses was done? No! Absolutely not. Don't you see? The evidence shows that those men who did actively participate and did the most damage, --- it shows who they were. And, why did they do it?

They did it because they knew there were scores, scores and scores of others standing around behind them ready to come to their assistance, cheering them on, so to speak, and they were back of them and ready to assist them if they needed it.

There are very few men who, if they are at all sane and normal would undertake to do the things, the vicious things, as were done here. But, how these men were spurred on, how they are spurred on and encouraged by these scores of men, by the mere fact of their presence. Many, many of them were behind them, looking on, and lending the encouragement of their presence and ready to assist them if need be.

In fact, you never have a mob but what there are not a few that don't tag along in the rear, but they wouldn't dare to do it or attempt to do the thing that was done if they didn't have this large number of men back of them ready to back them up.

And, as far as Wise is concerned, he happened to come up on the scene, all the evidence shows he just happened to come up along this public street where anybody had a right to be, or where anybody could walk along if he wanted to---just a public street. That isn't like a military installation, a staging area, if you please, such as this Fort, where you are supposed to stay out of certain areas at certain times of the night.

Now, what were they there for? They were there for only one purpose, if it please the Court, and that was to do harm or to stand ready and willing to give aid and assistance if it is needed.

You remember Sergeant Farr's testimony when he said he had to be taken back up through two lanes of men. You recall after he was hurt and the soldiers tried to take him out of the orderly room, Farr said he walked a little distance and had to be cleared through these lanes of colored soldiers and, what does that mean?

It means there were men there, many, many of them who were ready to lend assistance, who were not near that orderly room, and who, no doubt, did not club anyone or knife anyone in that orderly room, and, yet, they are just as guilty as the men that did that.

The fact is that their part was one of serving as perhaps a lookout or perhaps as someone to keep the Italians from running through their lines, or getting past or escaping, they may have been capturing them, or clouting them, or forcing them back into the middle so they would have plenty to work on, those boys who were in there doing the work.

So you have an entirely different picture, an entirely different situation. That is why the Judge Advocate General says, you can convict them under the circumstances of the case.

You cannot say, that just because one man was on a street, walking down a public street, and an innocent bystander,---that does not mean that every man in that area that night, who could have cracked an Italian over the head was also an innocent bystander.

There are some expressions in this Bamber Bridge case which are tremendously interesting and, because the Court is going to be interested in this case at the close of the case, I think it might be well to read some of these expressions to the Court. I know the Law Member is well acquainted with this matter, and he knows it, but even though he knows it well I believe after all every member of the Court has a right to know these matters and be familiar with them.

And then, also, it has a value at the close of the case when the court is called upon to write their findings and their sentences.

Let us take a few excerpts from the Opinions and Statements that are quoted by this Board of Review from this Bamber Bridge Case that counsel has read into the record and pointed out to the Court.

"It is not necessary, therefore, to prove that the

party actually aided in the commission of the offense; if he watched for his companions in order to prevent surprise, or remains at a convenient distance in order to favor their escape, if necessary, or was in such a situation as to be able to readily come to their assistance, the knowledge of which was calculated to give additional confidence to his companions, in contemplation of law he was aiding and abetting. Mere cooperation without an understanding may not make a conspiracy."

Now, while we are talking about a conspiracy, these men are not charged with a conspiracy. I don't know what gave counsel that thought. As a matter of fact, many of these men probably did not go down there until after this first group went down there. But there is no charge of a conspiracy here. All right.

Now, there isn't any question but what every one of these men that went down there went down by preconcert. I don't mean by that that they all had an agreement with everyone present that we shall all go down there together, but they all went down at one time or other, or as the testimony shows, the first group was led down by Corporal Luther Larkin and Jones took another group down there, and Hurks led some more down there. They were not down there just accidentally, they didn't just happen to come from out here in the woods and just stumble into the Italian area. There is no testimony to show that. All right.

"On the other hand, where one's presence is by preconcert, he may be guilty as an aider and abettor, although neither by word nor by act does he encourage or discourage the commission of the felony."

If he went down there with the idea of helping, if help were necessary, or if he went down there for the simple purpose of being there so that if he should be called upon, if it were necessary, or if he went down for the purpose of letting his mere presence serve as an encouragement for the others, --- that is sufficient. All right.

"All persons that are,---" and I am still reading from this text that counsel presented to the Court. "All persons who are actually or constructively present at the time and place of a crime, whether it is a felony or merely a misdemeanor, and who either actually aid, abet, assist, or advise its commission, or are there with that purpose in mind, to the knowledge of the party actually committing the crime, are guilty as principals in the second degree, although they did not themselves accomplish the purpose."

And, there it is, "although they did not themselves accomplish the purpose."

And, "Where two or more persons acting with a common intent,---" and now this is good, if it please the Court,--- "Acting with a common intent jointly engage in the same undertaking and jointly commit an unlawful act, each is chargeable with liability and responsibility for the acts of all the others, and each is guilty of the offense committed, to which he has contributed to the same extent as if he were the sole offender. And the common purpose need not be to commit the particular crime which is committed,----" and let us get that. Mind you, this is the Board of Review Opinion that Counsel has vouched for in his argument, the one that Counsel has asked this Court to accept as the law.

"And ~~the~~ common purpose need not be to commit the particular crime which is committed; if two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal, if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose, or as a natural or probable consequence thereof."

Now, they did not have to have in mind the hanging at all. But that is there. And there is plenty of authority that shows the same thing. I have got cases,---- I don't know whether I am going to get to read them all or not, because I don't want to take too much of the Court's time. But that is the settled rule, that when a mob engages on a vicious undertaking such as one of this nature, there is no saying at all the extent to which the ravages of that mob might go and that is why there must be legal responsibility and liability for the acts of such a riotous group.

"In order to show a community of unlawful purpose it is not necessary to show an express agreement or an understanding between the parties."

Now, please get that, if it please the Court. "In order to show a community of unlawful purpose, it is not necessary to show an express agreement or an understanding between the parties." And, how do you arrive at it? Let us see. "Nor is it necessary that the conspiracy or common purpose shall be shown by positive evidence; its existence may be inferred from all the circumstances accompanying the doing of the act, and from conduct of defendant subsequent to the criminal act; in other words, preconcert or a community of purpose may be shown by circumstances as well as by direct evidence."

In other words, preconcert, or a community of purpose, may be shown by circumstances as well as by direct evidence. And what do you look at? Principally you look at what is done, you look at what they actually did, to see what they had in mind, and there are several authorities who say that the preconcert and the community

of purpose is arrived at and inferred from the circumstances and from the facts of what actually took place. All right.

Now, I want to read one or two other excerpts from this opinion. And these certainly fit part of this case just like a glove.

"It is not necessary that the riotous violence should be premeditated by the assembled perpetrators; therefore, the original assembly may have been by accident or for a lawful purpose."

And, that has actually happened a time or two where the actual intent at the time of the assembly was not for an unlawful purpose and yet, as it developed, it soon embarked upon an unlawful purpose.

"All concerned in an unlawful assembly are equally guilty of the subsequent acts done by any of them in furtherance of the common object of the assembly, and all who are present at the commission of any riotous act and actively engage therein by act, sign, or word, are principal rioters."

Now, if it please the Court, the Judge Advocate General, as I know the Law member may advise the Court, and will advise the Court, has written some opinions lately that deal with the latter thought and that deal with the question of the commission of murder.

Where murder was actually not intended at the time that the offense was initially conceived. And today there is nothing better settled under the decisions of the Judge Advocate General than that malice aforethought does not mean that there was an intent to kill at the time that the incident was conceived.

It does not mean that at all, and the decisions are very plain on that. In the course of those opinions the Judge Advocate General has quoted more from one authority than from any other. He has quoted very liberally from Wharton's Criminal Law. There have been several editions and I think now the 12th edition is probably out, which is perhaps the latest edition. That has been accepted as a text that the Judge Advocate General feels states the rules correctly and in these opinions in this digest of July 1944, the Judge Advocate General has quoted very liberally from Wharton's, and has accepted it as the text he would follow. I want to read a few excerpts from the Opinions which have been adopted and I am referring now to Opinions appearing in the 13 CM Eto. 1453 1944 July Bulletin, page 285. This is the part that I would like to read to the Court. First: "However, it is not necessary to prove that the party actually aided in the commission of the offense if he was in such a situa-

tion as to be able readily to come to the assistance of his companions, the knowledge of which was calculated to give additional confidence to his companions, he was aiding and abetting. (Wharton, Criminal Law, 12th Ed., Sec. 246, pp 333-334).

Quoting from Corpus Juris, this time. "This is a statement by the Judge Advocate General. "If the proof shows that a person was present at the commission of a crime without disapproving or opposing it, a jury may consider this conduct in connection with the circumstances, other circumstances, and thereby conclude that he approved the commission of the crime and lent to it his support in approving or aiding and abetting the same."

Now, what are some of those circumstances? The most powerful one was what? What were they doing down in that Italian area at that hour of the night?

So we have the Judge Advocate General saying without a question of a doubt that the supposition is that a person present at the time of the commission of the offense without opposing or disputing it, thereby is lending his support and aiding or abetting.

There is no evidence in this case that there was ever a single negro soldier in that area that night who opposed or disputed that riot until the time that the M.P.'s arrived down there, and then some of the men who have been brought in as a witness, -- two of whom were brought in to help. Now, further:

(Reading from Corpus Juris)

Now, I read that rather deliberately, and for this reason. It is not being contended,-- and I want to be perfectly frank about it, -- it is not being contended by the Prosecution that rioting is a felony. It is contended by the Prosecution that rioting is a very, very serious Military offense, and when I make that statement I need to put point to the fact that there has been no maximum penalty placed on the limit of punishment for rioting. No maximum. The only penalty that cannot be assessed for that offense is death. And this Court well knows that when crimes are not considered to be of such a serious nature in Military parlance then we find that they are covered by the table of maximum punishments.

Well, you find nothing in there that places any ceiling on the punishment for rioting, and you do have this Article of War that covers rioting very, very specifically, saying the punishment may be such

as a Court Martial may direct.

And even the Judge Advocate General has held that even in the case of a riot attempt there is no maximum on the ceiling of punishment.

Of course, the death penalty cannot be given, but there is no maximum, otherwise.

Now, speaking of malice aforethought.

(Reading from Corpus Juris)

Now, you may ask why I am speaking of felony after I have just told the Court that as far as rioting is concerned, I do not consider it a felony? All right.

The evidence in this case shows that when those men went down there, they went down armed with clubs, they went down armed with knives, they went down armed with trench shovels, clubs and axes, such as have been offered in evidence here and which were all of such a type of weapon that this Court knows they can readily mean a man's death when struck on the head with such a club. And, the knives, such as offered here, they can readily mean a man's life when used as some of these knives were used.

There was not a man,--- and bear in mind now the evidence shows when they started down there that one of the first things that was done was to tear this fence out that ran along at the side of the mess hall, and as a result they were able to equip themselves with these very, very heavy clubs. I ask the Court, is this a dangerous instrument when a man is struck on the head with that (indicating)? Is that a dangerous weapon, if it please the Court?

Well, it so happens that under the decisions of the Judge Advocate General's Department an assault with intent to do bodily harm with a dangerous weapon is a felony and for that penitentiary confinement is authorized. That is the way we arrive at whether it is a felony or not, under Military Law.

But for anything that is not a felony, as the Law Member well knows, penitentiary confinement would not be authorized. But it is authorized in cases of assault to do bodily harm with a dangerous weapon.

Now, for this case, if there is any doubt about what a dangerous weapon is, let me read a few decisions of the Judge Advocate General on what has been held to be a dangerous weapon.

(Reading).

And a glass bottle has been held to be a dangerous

weapon.

(Reading from Corpus Juris.)

Well, these men were not charged with that offense. Obviously, not, because you would have to charge each one of them separately. That does not make a particle of difference in determining whether or not they went down there for the purpose of committing a felony. We are not talking now of what they are actually guilty of or charged with. They could have perhaps been charged with several offenses. They were not, but they did not have to be for the Court to be entitled to consider what the intent was.

And, further, is there any doubt in anyone's mind, in the mind of any member of the Court, but what these men went down there for the purpose of doing grievous bodily injury to those Italians? No, there can be no doubt about that. Those men went down there armed with those heavy clubs and armed with those knives and bricks and everybody that went down there saw men walking around with something in his hands and they went down armed with these heavy clubs and knives, and bricks, and stones that were being thrown at these people.

Now, can there be any doubt about the intent to commit grievous bodily injury?

And if you can say, yes, you don't have to go much further because under the plain reading of the Manual, if the intent was to do grievous bodily injury then the malice aforethought has been established. And why is that? It is that for the simple reason a man is not going to be permitted to speculate on whether an axe, when a man is struck with it, whether it will kill a man or merely wound him. A person who is using a weapon of that kind is not going to be able to conjecture that he is just going to crack this man's skull a little bit or whether he would just cause a little concussion or whether he would split his head open or cause a concussion that would mean his death.

When you start out using weapons of that nature every single act and consequence that results therefrom is one that is chargeable to the persons who start out on such a mission and with such weapons. It doesn't make any difference whether the man did it himself or not. There isn't any doubt that each one of these men could have been charged with murder if the Convening Authority had chosen to do it, because technically they are all guilty of it.

But instead of that, the leaders, the men as the evidence has developed who were prior to the crime the leaders, were those who were charged with that offense.

Now, you know there is another thing I have diffi-

culty keeping from my mind. It is not that we need it or that the Court has to rely on that piece of evidence. I am thinking of one of those leaders running around with that whistle, blowing that and calling and hollering to the men, "Let's go get them, let's mob them, let's mob them." I can't forget that.

Now, you talk about intent. Doesn't that indicate what these men had in mind to the Court, and doesn't that indicate the malice aforethought, that there was going to be grievous bodily injury done? Of course.

Under that testimony, how can there remain any question in anyone's mind but what it was. But, as I say, you do not have to rely on that. You have those men definitely going down there for the purpose of doing grievous bodily injury and there can be no doubt but what the requirements as to the malice aforethought have amply met by that. And I refer now to this paragraph 148a.

(Reading paragraph 148a) (M.C.M.)

Now, if Counsel wants to put it on the basis of the fact that it is necessary to show a felony, well, we have got the felony. We have got them going down there for the purpose of committing an assault with a deadly weapon. There wasn't a single man that could not have seen those weapons and could not but have drawn the conclusion that if a man were hit in the right place, and hit just hard enough, it probably would have meant his death.

And, let us pause there just a moment and say, to me, one of the greatest miracles about this matter is that we have only one dead man instead of ten or twelve.

Now, if it please the Court, I am not going to take much more time, but I feel in order to get over to the Court the points of law which are controlling and will be so helpful to the Court in its ultimate determination I am going to ask the Court's indulgence a little further and I am sure it will be worth while and very helpful because the Court can bear it in mind as the testimony is developed in this case from this point on.

We have seen in what high regard Wharton is held by the Judge Advocate General because he is quoted from so very liberally, and I want the Court to hear this. I want to quote another thing or two, wherein Wharton accepts the statement of an authority on rioting, Hawkins. He quotes: (Reading from Wharton, 11th Edition, Vol. 1, page 714.)

All right, now, reading again from Wharton, Volume 1, 11th Edition, Sec. 258, pages 329 and 330, there isn't any question but what this is an accurate statement of the law, and I do want to state it to this Court. This

has been prepared and I want the Court to know it will be a little difficult to have these books available, we had to borrow them and bring them down, and they cannot be down here over a period of time for this session.

But I know, and the Court knows, what I am reading from may be compared and inspected with the original volumes.

(Reading from Wharton, 11th Edition, Vol 1, Sec.258, pages 329 and 330.)

Now, bloodshed was intended only as a probable incident under the statement here mentioned. And a homicide happened to occur. Well, was bloodshed intended in connection with this incident? What does the Court say to that in answer to the circumstances? In answer to the things that were down there by the accused? All right, another excerpt from Wharton:

(Reading from Wharton, 11th Edition, Vol. 1.)

All right. Now, I don't know who he had in mind or who had in mind to hang poor Olivotto. I don't know. And I am not here to pass on that. And I am not here to suggest who might have intended it. I do know that the proof in the case up to this point shows that there was an Italian soldier who jumped from his barracks' window because he was so frightened and scared and because he was so terrified and, unfortunately, he jumped right into the hands of some of these negro soldiers. And the proof, if it please the Court, does not show as counsel implied, that he walked over to this tent by the orderly room. Instead, it shows that he was taken there in the hands of three negro soldiers. That is what it shows. And that is the last time that any living witness as far as the testimony up to this point shows, saw Olivotto alive.

No proof? No inference that he was able to extricate himself from those who had him? Oh, yes. The proof shows when he jumped out of the window of his barracks he was trying to get away by backing up against the barracks and he was trying to escape, and they were closing in on him, some five of them, and then three of them got ahold of him and took him away, we don't know where.

Now, the Court knows I have not by inference or otherwise indicated to this Court that the three charged with murder are those that the Prosecution believed did actually place the rope around his neck and pull him up on the cable. The Prosecution has not done that, and we are not seeking to do that at this time. But the proof shows very definitely that they were the leaders, that they are the men who took those men down there, those groups, and they are the ones who had within their responsibility the actual consequences, the death of this

man, and they are responsible for those consequences in law.

And that is, that is a theory that is well supported and that is a theory that is well founded by the legal decisions. Now, let us just go on a little further. I am not going to read a whole lot more. I don't want the Court to feel that I am going into this any further than necessary, but I cannot keep from pointing out to the Court the theory I have just mentioned that is accepted in law. It is the theory upon which this Prosecution under the murder count is based, and it is a sound theory. Now, please get this. This is from Corpus Juris Section 46, page 1073.

(Reading from Corpus Juris Section 46, page 1073.)

Now, obviously the fact that the defendant did not know that the killing occurred cannot lessen his responsibility. And here is a statement of law that is taken from the preponderance of authorities on that question, and here is what it says:

(Reading from Corpus Juris.)

Now, no person can embark on a situation as serious as that and then speculate on whether a human life would be taken or should be taken or should not be taken. That is the theory of it.

Law member: Col. Jaworski.

Trial Judge Advocate: Yes, sir.

Law Member: A thought at this point just runs through my head. Suppose, and I am only supposing,--supposing that the murder or the hanging was an independent action, separate and apart from what we might call the riot, and it was prompted by the person with malice aforethought of one or more individuals in an act separate and apart from this riot. Then a participant not directly connected with that murder could not be held, could he? Isn't that the law?

Trial Judge Advocate: There is some authority I would like to read to the Court on that. I have it somewhere. I think I can find it in just a minute. But aside from that, if it please the Court, that is not what your evidence shows in this case.

Law Member: That is not here now.

Trial Judge Advocate: In other words, this man was taken away at the height of a riot. That is what the evidence shows. If the Court had some evidence that after a riot they came to blows and then a separate and wholly disconnected matter occurred, entirely separate and apart from the riot, that, I will agree, would be some-

thing that would not have occurred as a result of the riot. And the responsibility of the rioters would have ended by that time. But you do not have that situation here. You have circumstances showing just the opposite.

You have the initial circumstances of showing right at that time, while the riot was at its height and still in progress, while a man was hiding and hoping and waiting for it to be over with, he sees those lights and hears those American voices down there by the obstacle course.

Now, I am going to scrap many of these authorities that are in a sense repetitious to the points that I have made to the Court, feeling that if any question arises in connection with this, I shall be glad to discuss it further with the Court or furnish the Law Member with such authority as he might care to have.

One word or two about the form of the specifications on the murder count. That form of specification is one that is approved. It is a form of specification that the Manual itself has set out for just such cases of charging murder. And you are not in Military Law required to draw up a specification as in civil law, it is quite different than Civil Law. You do not proceed to set out alleged facts in connection with it. That is because there has been devised in Military Law a very direct and concise method of charging offenses and you do not, as you do in Civil Law Procedure, have to allege in detail any of the facts connected with the matter or allege the basis of it.

If their actions constituted, under the law,--- because of their responsibility for the act involved,--- if they constituted murder, as, of course, these decisions I have read to the Court so plainly hold, then they can be charged with murder. And murder is what it is, just exactly what the Manual says it is, and the specification is founded on the wording as well as the specification forms set forth in the Manual. There is an Opinion which I wish I would be at liberty to discuss with the Court, but I am not at liberty to discuss it with Counsel, so I will merely say it is exactly the same specification form which was used. The Point I am driving at is this: all that you look to in Military Law is whether or not that act constituted that offense. If it does, you use that form, and the only change being whenever others acted in a community of purpose and you don't know their names, you, of course, say that they acted together with other persons whose names are unknown.

But there is no justification for casting aside the form of specification which the Manual sets out. The Court knows that they appear toward the back of the

Manual. There is no purpose in casting aside those specifications and using an entirely different form of specification.

Now, there is the form which is used which is here in the back of the Manual and the only difference here is there were more than one named, and they were acting jointly, and they acted as leaders, setting off the spark to this incident, setting that spark afire and then a man loses his life, and the specification for murder is the appropriate one to be used.

I want the Court to know I appreciate the very close attention paid me in discussing these legal principles. I feel they will be helpful in the end. I am sorry I had to ask the Court to indulge so long. I do want to say if there is any phase that I have discussed that is not clear or, if any member wants to ask me any questions on it that is not clear, I will be very glad to answer and make it clear and produce authorities.

Law Member: I want to ask one question of the Trial Judge Advocate:

Trial Judge Advocate: Yes, sir.

Law Member: On a motion for a finding of not guilty the Manual provides that if the Court feels there is substantial evidence, then a motion should be denied?

Trial Judge Advocate: Correct, sir.

Law Member: Assuming for the purpose of argument only that the evidence against a particular accused has been given by one man, and suppose that the individual members of the Court question the credibility of the witness. Do you believe in such an instance that is substantial evidence then under those assumed facts of the proof?

Trial Judge Advocate: I do. Merely questioning his credibility at this time,---if the Court were wholly discrediting it, and said, "I just don't believe that, I just don't believe anything that man said," and had reason to feel that way about it, then the Court might say there is not sufficient evidence.

But I do not believe, if it please the Court, at this juncture of the case that any such situation as that did develop. For this simple reason: Take the evidence as has been deduced now,---and, of course, I realize the Law Member stated a hypothetical situation purely, and no names were mentioned,---but when the evidence that has been produced connects a man up with that offense, and you have not anything else in the record to disprove it, absolutely nothing else, the only way the court would be justified that that is not substantial evidence, is to throw it out completely, which

I don't think at this juncture would be justifiable, if there is nothing more.

If it transpires at the end of the case, and the Court feels at the end of the case that there is insufficient evidence, there is nothing to keep the Court from acquitting them.

But to let the record show, that up to this point there has been definite testimony with respect to a certain accused, and then just let the Court say that particular one is entitled to have a motion of not guilty granted, I think leaves the record in a rather awkward shape.

If all of the facts and elements necessary to convict him have not been proved it is an entirely different thing. But your elements have been proved. Of course, I might say this to you. I think there is no question but what the purpose of the motion counsel is entitled to make at the time of resting of our case is one he is entitled to make, against one against whom a case has not been made out. For instance, if you were sitting as a jury, there isn't any question but what the evidence would be considered after it was all in. But I think its true purpose is, if there has been a failure to connect any of the essential elements of the offense with that particular accused,--- why I think he is entitled to have a motion granted.

But you do not have that situation here, not with a single one of the accused. Not a single one. Have I answered it now, what the Law Member questioned me on?

Law Member: Yes. Have you anything more, Major Beeks?

President: Court will recess and reconvene at 1:30. At 1:30 the Court will reconvene here and then proceed to the obstacle course, to the scene of the alleged hanging, after which the Court will reconvene here and proceed with the matters now in hand. So we will simply meet here at 1:30.

(At 11:55 a.m., a recess was taken until 1:30 pm same day.)

AFTERNOON SESSION

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused are present, and all members of the Court are present, that all personnel representing the accused, as well as the personnel representing the Prosecution are present.

President: The Court now proposes to proceed to the scene of the alleged hanging and to the area adjacent thereto. Before we leave, the Law Member has something to say regarding that trip.

Law Member: Everybody will recall the instructions that were given at the time the members of the Court made the trip to the Italian area previously. It is distinctly to be understood that no questions will be asked or answered, nor will any comments be made while this inspection by the members of the Court is going on. Such questions, answers, or comments would be highly improper and it is a practice that is condemned. We will go to the neighborhood of the Little Chapel, and we will walk down the lane to the scene of the hanging. We will be accompanied at all times by the accused. I believe the Provost Marshall understands that. Cars which take us to our take-off point will then drive down below the hill and meet us on the road as near the scene of the alleged hanging as possible, the scene where the body was found in the area of the obstacle course. Of course, the Defense counsel, and the Trial Judge Advocate will accompany the party. As to the members of the press or their taking any pictures, that is a matter for the Public Relations Officer and is not for this Court.

President: Court will recess.

(At this point, 1:35 p.m., a recess was taken until 2:45 p.m.)

President: Prosecution ready to proceed?

Trial Judge Advocate: Yes, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President, Court will come to order. Do you want to have a roll call at this time?

Trial Judge Advocate: Yes.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

President: The Law Member will make a statement for the record as to the action of the Court during the last recess.

Law Member: The Inspection or Review of the premises which has just been completed consisted of the following:

All the members of the Court, and the accused, and the attorneys for the Prosecution and the Defense proceeded to the immediate area of what appears to be the recreation hall on Prosecution Exhibit 2. From there we all walked down what has been, in a complimentary manner called a path, to the scenes which are depicted in Exhibits 28, 29, and 30, and 31. After arriving at the bottom we were picked up by the trucks and the automobiles and returned to the court room.

At all times the members of the court were within the view of the accused. No questions were asked or answered, nor were any comments made within the hearing of the Court.

Has either counsel any addition which they wish to make to that statement of the review which has just been made by the Court?

Trial Judge Advocate: The Prosecution has none, sir.

Defense: The statement is satisfactory to the Defense, sir.

President: Any members of the Court have anything to add?

Law Member: Now, Major, did you wish to argue the motion on rebuttal?

Defense: I did, if the Court please, but in view of the cooling off period, I have nothing further to add.

Trial Judge Advocate: May the record further show that each of the accused were present when Court convened as well as all members of the court and personnel representing the accused, and the Prosecution.

Law Member: I thought you did that.

Trial Judge Advocate: No, sir: I believe I failed to do that.

Law Member: As regards the motion made, at this time,

by counsel for the Defense for a finding of not guilty on Charge 1, specification 1, in that a violation of the 89th Article of War has neither been alleged nor proven; subject to objection by any member of the Court, the motion has been entertained and is denied.

President: Are there any objections by any members of the Court? There appear to be none; the motion is denied.

Law Member: In regards to the individual motions made to the following named accused, Buckner, Dickson, Ford, Williams, Campbell, Coverson, Snow, Graham, and Umblance on the ground that the facts proved are insufficient as a matter of law, to constitute a violation of the 89th Article of War, subject to objection of any member of the Court, each motion is at this time denied.

President: Any objection by any members of the Court? There appear to be none; the motions are denied.

Law Member: As to the motion against the specifications contained in Charge 2, which names three accused, Larkin, Jones, and Hurks. On the grounds that the specification is not correct, and that the facts proven against the three named defendants are insufficient, as a matter of law, subject to objection by any member of the Court, the motion is denied.

President: Any objections by any member of the Court? There appear to be none; the motion is denied.

Law Member: I turn the case over to you, now, Major.

Defense: If it please the Court, the Defense waives its right to make an opening statement. Now, what is our next exhibit number? Do you know?

Reporter: K.

Defense: If the Court please, I want to offer in evidence at this time as Defense Exhibit K the Charge Sheet, which it is stipulated between counsel for the Prosecution and counsel of the Defense, contains the identical charges and specifications which were served on each of the accused in this case.

Trial Judge Advocate: Except as to the name of the accused, of course, is different in each Charge Sheet.

Defense: Well, I am offering it for the purpose of showing page 2, to show the identical charges and specifications that were served on each of the accused in this case.

Trial Judge Advocate: Yes.

Law Member: Subject to objection by any member of the Court it will be received in evidence and marked Defense Exhibit K.

President: Any objection? There appear to be none.

The document above referred to was marked and received in evidence as Defense Exhibit K.

Law Member: I think there is something in this Charge Sheet that there should not be at this time brought before the Court.

Defense: Well, aren't the Charges before the Court, anyway?

Trial Judge Advocate: That is right. They become a part of the evidence that goes with the court. They will go with the court in its deliberations.

Defense: Well, if the Court feels that there is something they don't want to see,

President: The evidence that has to do with the age of the witness and so forth is not properly before the Court.

Defense: Well, that is probably true.

Law Member: I am sure that it is not necessary.

Defense: Well, in order that there be no question, may it be stipulated that the Charge as set forth on each of the accused in this case contains the charges and specifications relating to a violation of the 92nd Article of War.

Trial Judge Advocate: Yes. They contain both charges and both specifications. Both charges and the specifications of each charge.

Law Member: You mean all the defendants?

Trial Judge Advocate: What the stipulation has reference to, is that there was served on each of the accused an identical charge consisting of Charge 1, violation of the 89th Article of War, and the specification thereof. And in Charge 2, a violation of the 92nd Article of War, and a specification thereof.

Defense: That was contained in each Charge Sheet

served on each of the accused?

Law Member: Subject to any objection by any member of the Court that stipulation will be received.

President: Any objection? There appears to be none. It will be received.

Law Member: Formally for the record, will you withdraw your offer of that exhibit, counsel?

Defense: Yes, I will withdraw it.

(Defense Exhibit K is withdrawn.)

Sergeant Louis G Cabral, 651st Port Company, a witness for the Defense, was sworn and testified as follows:

DIRECT EXAMINATION

Trial Judge Advocate: Will you state your name?

The Witness: Louis G Cabral

Trial Judge Advocate: Your grade?

The Witness: First Sergeant.

Trial Judge Advocate: And your organization?

The Witness: 651st Port Company, now stationed overseas, sir.

Trial Judge Advocate: And you are presently at Camp Jordan, are you?

The Witness: Yes, sir.

Questions by Defense:

Q Sergeant, what is your relation to the 651st Port Company?

A I am the First Sergeant of that organization.

Q You are the First Sergeant of that organization?

A Yes, sir.

Q And how long have you been the First Sergeant of that Company?

A That organization, sir, was activated in February.

Q You have been First Sergeant of that organization since that time?

A Yes, sir.

Q By the way, at this time, counsel, may we stipulate that the officers of the 651st Port Company, as well

as of the 650th Port Company, are overseas?

Trial Judge Advocate: That is correct, with the addition to that stipulation I mentioned, that is, that the Defense has not requested their application.

Law Member: It is stipulated that the officers of the 650th and 651st Port Companies are overseas, and further that the Defense did not request their application, is that correct?

Defense: That's right.

Law Member: Subject to objection by any member of the Court, that stipulation will be received.

President: Any objection? There appears to be no objection. The stipulation will be received.

Q Where have you served, Sergeant, since August 14th of this year?

A I have been at Fort Lawton.

Q Have you been at Fort Lawton all the time since August 14th?

A Up until the time we left for overseas.

Q Well, the point I was getting at, Sergeant is, since August 14th, you have been overseas?

A Since August 14th?

Q Yes, since August 14th of this year?

A No, sir.

Trial Judge Advocate: Not that particular day.

Q Well, I mean, since August 14th of this year, between August 14th and the present time you have been overseas?

A Yes.

Q And you were returned from overseas?

A Yes, sir.

Q Now, I don't want you to mention the place you were, you understand?

A Yes, sir.

Q Now, calling your attention, Sergeant, to the night of August 14, when there was trouble between certain colored soldiers and Italians, will you tell the Court where you were at the time that you first learned that such difficulty took place?

A I was in the orderly room, sir.

Q In the orderly room?

A Yes, sir.

Q What was the number of your orderly room?

A Building 670.

Q Building 670?

A Yes, sir.

Defense: Let us go over here on the map so the Court will understand. Just point out where that room was.

Law Member: Will you pull the map over now so we can look at it?

The Witness: (indicating to map).

Q Now, this is Prosecution Exhibit 2 here, Sergeant. You see here is the Italian area bounded on this side by Wyoming Avenue, and on this side by Lawton Road, and that area bounded by those roads represents this Italian area down here,---bounded on the east by Wyoming Avenue and on the west by Lawton Road. That is where these colored soldiers were supposed to be when that altercation took place (indicating). Now, show the Court, or tell the Court where your orderly room was?

A Barracks 670?

Q Yes.

A (indicating)

Q Now, you mentioned to me, I don't believe they heard you, as we were coming away from the map, Sergeant, that the orderly room was partitioned in two rooms. I wonder if you would just explain that to the Court?

A Well, sir, it was just an ordinary barracks that had been partitioned in two so as to separate the two orderly rooms. My orderly room being the half nearest Barracks 675, and the opposite half being used as an orderly room by the 650th Port Company.

Q So that the two Companies both used the same orderly room?

A No, sir; not the same orderly room, but the same building.

Q The same building?

A Yes, sir.

Q Now, where had you been earlier on the evening of August 14, prior to the time you went out to the orderly room?

A Well, sir, I had been back and forth to a Service Club down below my area that was formerly AMT Headquarters. A lot of the men had visitors on the Post, wives, lady friends, and so forth. And we were also issuing the last-minute supplies at the mess hall, and I kept going back and forth from the

mess hall to the day room down there, rounding up my men, getting them ready and getting them together so they could get up to the mess hall and draw their last minute items. And I spent the biggest part of the night going back and forth like that.

Q Now, I had reference to the last place you were before you came up to the orderly room?

A I was in that Service Club.

Q Do you recall about when it was? Do you recall when it was you left the Service Club?

A Oh, about a quarter to eleven or eleven o'clock, sir.

Q About a quarter to eleven or eleven o'clock. And about how long after you left the Service Club was it that your attention was called to the fact that there was a fight or something unusual going on in the Italian area?

A Sir, I don't know exactly; I would say between forty-five minutes and an hour.

Q Between forty-five minutes and an hour?

A Yes, sir.

Q And what happened to call your attention to the fact that there was a fight going on there?

A Well, sir, there was a charge of quarters. And two other members of the organization in the orderly room and myself, well, we were joking and talking about an incident that had happened to one of the boys when he was first inducted into the Service, when someone shouted outside that there was a fight. So I went out through the door, thinking at first there was a fight amongst some of the men in the quarters, perhaps they had been gambling or something like that. And I was standing by a door in front of the orderly room and I noticed there was a bunch of men congregated out in front of headquarters barracks.

Q Now, I wish you would show the Court where Headquarters' Barracks is again?

A (indicating to map.*

Q That is Building 672 on here?

A Yes, sir.

Q That is known as Headquarters Barracks?

A Yes. All of the extra-duty men are in that barracks.

Q That is Barracks 672. You say you noticed men standing in front of the barracks; where would that be?

A (indicating)

Q You mean in front of the end of 672?

A Yes, sir.

Q Cosiest to 667?

A Yes, sir.

Q While we are over at the map now I am going to ask you to indicate to the Court which of these buildings on Prosecution Exhibit 2, which building is the latrine?

A 671 is the latrine, sir.

Q 671?

A Yes, sir.

Q Now, where is your Company mess hall?

A The Company mess hall is across the road, sir.

Q Your Company mess hall does not show on this map?

A No, sir.

Q In other words, it would be across the street to the south of 675?

A Yes, sir; not exactly opposite 675, but more or less.

Q Well, it is not directly opposite 675, but it would be across the street?

A Yes, sir, that is correct, sir.

Q All right, Sergeant, sit down here again please. Now, do you know Sergeant Ernest Graham?

A Yes, sir.

Q Do you know what particular assignment he had that evening?

A Well, sir, he was mess sergeant. Being that we were issuing the supplies in the mess hall, Graham was responsible to see that the place was cleaned up when they would get through.

Q Did he have any particular assignment that evening?

A Well, sir, he helped the Supply Sergeant along with the cooks to issue the stuff.

Q Well, the point I am making is, was anything in particular to be done with that mess hall that night?

A Well, sir, it had to be cleaned up and readied for inspection the next morning.

Q Will you tell the Court whether or not that is a big job or a small job, or just what kind of an undertaking is it?

A Well, sir, the requirements we had to meet for the inspection we had been having, I would say it was a pretty good sized job.

Q It was a pretty good sized job?

A Yes, sir.

Q Well, now, Sergeant, you were telling the Court that you saw a crowd standing outside the Headquarters Barracks down in the vicinity of 672. Will you just go on again and tell the Court just what you did?

A Well, sir, upon seeing this crowd around in front of headquarters barracks, like I said, I took it for granted there was a fight amongst the men in the barracks, probably had been gambling or something like that, and I went down and asked them what its all about. And someone in the crowd spoke up and said a group of Italians,---

Trial Judge Advocate (Interposing): Well, we better not get into conversations on something that took place away from the scene of the riot.

Defense: I claim the same res gestae rule that applied to you ought to apply to us.

Trial Judge Advocate: Well, he is talking about something now that took place away off and away from this area.

Defense: You mean to say that none of those men went down in that area?

Trial Judge Advocate: No, sir. The point I am making is, Counsel, the conversations made over here between men who did not participate in this affair, and the fact it was some distance away, has no possible application to the res gestae rule. You have got to bring it to the scene of the riot.

Defense: Well, we can do that. We are indicating the area in front of another barracks as being a part of the scene, and I don't see why it should be limited to one particular barracks.

Trial Judge Advocate: Well, conversations of that kind could not be a part of the res gestae, and I make objection to it, it is purely hearsay.

Law Member: Objection sustained.

Defense: If the Court please, here is a witness who can testify as to what went on at this barracks. They had a right to testify what went on at the other barracks.

Law Member: It can appear in the record at the time this witness did ask about what was going on that some remarks was made about a fight in the Italian area.

Defense: Well, that is all he is going to testify to.

Law Member: If that is the answer, that can be his

testimony, or he can testify to that.

Q All right. Sergeant, after you learned what was going on, how long a period of time did you remain in the area of Barracks 672?

A Well, sir, as soon as I found out what it was all about. I wasn't there more than two minutes, two or three minutes.

Q Then what did you do?

A I started up for the orderly room to get,---call the M.P.'s, sir.

Q That is Building 670?

A Yes, sir.

Q Well, did you go into 670 or not?

A Yes, sir, I did.

Q And what did you do when you were in Barracks 670?

A I called the Military Police. In fact, I could not think of nothing but the guard house, and I asked, I kept calling the operator, and kept telling, or told her to connect me with the guard house, that there was an emergency, that the colored troops and the Italian prisoners were having a brawl.

Q Then after you had put in this telephone call and had this conversation, what did you do?

A I come out in front of the orderly room and I stood by the walk and when I saw the M.P.'s, I started and Sergeant Aubry came out and we went up to the corner to hail the M.P.'s, and show them where to go and a few minutes after that, from the time we got to the corner, the first jeep had started down the hill and we hailed them, but they didn't stop.

Q They kept right on going?

A Yes, they kept right on going.

Law Member: Who kept on going, the M.P.'s?

The Witness: Yes, sir.

Q You might show the Court, so there will be no question about it, just where it was you went out there and waited for the M.P.'s?

A (indicating on Prosecution Exhibit 2). Well, sir, after I learned what it was all about, I started up to the orderly room. I called the M/P.'s, and came out and stood out here a few minutes.

Q You stood out here indicating between Barracks 670 and 675?

A Yes, sir. And then Sergeant Aubry came out and he and I went up to the corner of Lawton Road, this road

here (indicating).

Q Yes.

A (continuing) And we stood there for a few minutes when the M.P.'s started arriving.

Q Now, just a moment. You and Sergeant Aubry walked up from near Barracks 670, or 672, to near Building 665, to the corner, and that is where you waited for the Military Police?

A That is right, sir.

Q Now, when you were on your way from Barracks 672, up to 670, did you see anyone?

A Yes, sir.

Q Who did you see?

A Sergeant Graham.

Q Now, with reference to the latrine here which is Building 671, will you tell the Court where you saw Sergeant Graham?

A I saw him way up here from 672 to the orderly room, I saw Sergeant Graham more or less in front of the latrine.

Q On the walk in front?

A There is no walk there.

Q Well, what appears to be a road or a path on the east?

A Yes, sir.

A Well, that is a road along there.

Q I was trying to get the point he was; it would be in front of 671 on the east, was it on the road?

A It was on the road. There is no walk along there, sir. The whole area there is a road.

Q The whole area is a road?

A Yes, sir.

Q What was Sergeant Graham doing at that time, if you know, Sergeant?

A Well, sir, what was he doing?

Q Yes

A I don't know what he was doing, sir.

Q Did you have any conversation with him; don't tell what the conversation was; but did you have a conversation, did you say anything to him or did he say anything to you?

A Yes, sir.

Q Now, at the time did Sergeant Graham have anything in his hands or not?

A No, sir.

Q Sergeant, do you know the reputation of Sergeant Ernest Graham in the Company, with respect to character, conduct, and Military standing?

A Outstanding, sir.

Q I asked you first if you knew his reputation?

A Yes, sir.

Q And what is that reputation?

A Outstanding, sir.

Q By the way, do you know Thomas Battle?

A Yes, sir.

Q Is he a member of your Company?

A Yes, sir.

Q Do you know the reputation of Thomas Battle in the Company for truth and veracity?

A Yes, sir.

Q What is that reputation?

A There is nothing I can say for him, sir.

Q Well, that does not answer the question very well. Is his reputation good or bad?

A It is not good, sir.

Q Do you know Sylvester Campbell?

A Yes, sir.

Q Is he a member of your Company?

A Yes, sir.

Q Do you know the reputation of Sylvester Campbell in the Company with respect to his character, conduct, and Military standing?

A Yes, sir.

Q What is that?

A It is good, sir.

Q Sergeant, at any time prior to August 14, 1944, was your Company ever called out to assist in suppressing a riot or rebellion of Italian soldiers?

A Yes, sir.

Q Will you tell the Court the circumstances?

Law Member: Wait a minute.

Trial Judge Advocate: Just a moment. I don't think that is at all admissible in this proceeding and I ask the Court to strike the answer if that has been given, and I object to any testimony along the line that is being attempted to be given here.

Law Member: The motion is granted.

Defense: I think you may examine.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant, for how long a period of time did you see Sergeant Graham that night?

A Well, sir, it is just a matter of seconds, I think. I didn't stop. On my way to the orderly room, I just passed him.

Q You were on the way and he was on the way?

A Yes, sir.

Q You were going one direction and he was going the other?

A Well, I don't know which direction,---yes, sir.

Q And it was just a matter of seconds, just about as long as you will see a man when you walk by him?

A Yes, sir.

Q What time of night was this?

A I don't know, sir.

Q Can you give us some approximate idea of what time it was?

A Well, sir, like I said, from the time I left the orderly room to the time I learned what the things was that were going on, what it was all about, I would say approximately between forty-five minutes and an hour.

Q You passed him then approximately forty-five minutes or an hour from what time?

A From eleven o'clock or a quarter to eleven.

Q From a quarter to eleven or eleven?

A Yes, sir; that is the time I left the,---

Q All right. Now,---

Law Member: Let him finish his answer, Counsel.

Q Did you finish your answer?

A (continuing) From the time I left the Service Club. I left the Service Club between a quarter to eleven and eleven o'clock.

Q And it was between forty-five minutes and an hour before you passed Sergeant Graham?

A Yes, sir.

Q Do you know where Sergeant Graham had come from when you passed him at that time?

A No, sir; I don't.

Q Do you know where he went to?

A No, sir; I don't.

Q All you are able to tell this Court is you just saw him for a brief few seconds that night?

A Yes, sir.

Q There were some of your boys that wanted to go down into that area, weren't there?

A I wouldn't know, sir.

Q Well, didn't you go out and talk to a number of them and tell them not to go?

A Yes, sir.

Q Didn't you have some little bit of,---didn't you have to talk pretty straight and strong to some of them to keep them from going?

Defense: I don't think this is a proper cross-examination, if it please the Court.

Trial Judge Advocate: I don't know why it isn't.

Law Member: I think as far as he has gone it is proper cross-examination.

Q Will you answer that question, please?

A Well, sir, I talked to my men that night, just like I would want someone to talk to me. Now, some of them were going down there, or wanted to go down there,---whether they did or not, I don't know, sir. After I learned what it was all about and that it did not concern us, I told the men to get back in the barracks and not to go down there, not to go near there.

Q You don't know whether some of those men went down there or not?

A No, sir; I don't.

Q Now, Sergeant, with whom have you discussed Battle's reputation for truth and veracity?

A With whom have I discussed it, sir?

Q Yes, Battle's reputation for truth and veracity?

A Maj. Beeks.

Q Maj. Beeks. Yes, I know, obviously, you have talked with him, but I mean prior to the time that you talked to anyone about being a witness in this case, and have you ever discussed Battle's reputation for truth and veracity with anyone else other than Maj. Beeks?

A You mean when the Company was here at the Fort?

Q Yes, sir.

A Yes.

Q Who?
A Capt. Jones.

Q Anyone else?
A Well, sir, I guess at different times with the Company officer.

Q Well, I don't want you to give us any guesses, I don't want you to guess. I want you to tell me specifically, and if you are guessing, I don't want you tell me. But do you recall anyone else with whom you discussed it with other than Capt. Jones?
A No, sir.

Q That is the only one recall with whom you discussed his reputation for truth and veracity?
A That is the only one if I remember correctly, yes, sir.

Q You don't know what time that night Sergeant Graham finished his work in the mess hall, do you?
A No, sir, I don't.

Q Did he ever tell you what time he finished his work in the mess hall?
A No, sir.

Q He did not tell you what time he finished his work there?
A No, sir, no, sir.

Trial Judge Advocate: That is all.

REDIRECT EXAMINATION

Questions by Defense:

Q Have you ever caught Thomas Battle lying to you, Sergeant?
A Yes, sir.

Trial Judge Advocate: Now, that is not what the reputation for truth and veracity is based on, and I ask that that be stricken.

Defense: Well, counsel opened that up, if it please the Court.

Law Member: That is not the proper grounds upon which a person's truth and veracity is impeached.

Q At the time you went from the orderly room down to Barracks 672, could you see, or tell whether or not anything was taking place in the Italian area?
A Yes, sir.

Q What?

A Well, sir, it sounded like windows breaking and sticks breaking, and a lot of hollering.

Defense: That is all.

RECROSS EXAMINATION

Questions by Trial Judge Advocate:

Q You heard voices screaming, didn't you?

A Yes, sir.

Trial Judge Advocate: That is all.

Defense: Defense has no further questions.

President: Any questions by the Court?

Maj. MacLennan: Yes, I have a question or two.

EXAMINATION BY THE COURT

Questions by Maj. MacLennan:

Q You saw Sergeant Graham, as I recall, in your testimony, just in front of Barracks 671?

A Yes, sir; approximately.

Q Or thereabouts?

A I don't know exactly, but approximately.

Q In that vicinity?

A Yes, sir.

Q You were with Sergeant Aubry from the 651st?

A At the time I met Graham?

Q Yes.

A No, sir.

Q And that was about forty-five minutes after you had left the Service Club?

A Approximately, yes.

Q Can you recall about when you left the Service Club?

A Do I recall the time, sir?

Q Yes.

A Well, sir, the Service Club closes, in other words, before they run everybody out, a few minutes before eleven, and then it closes up the place at eleven o'clock or shortly before. I, upon visiting the Service Club, as often as I did that night running down my men, going back and forth and sending them back up to the mess hall so they could draw their last minutes supplies,---each and every time I went to the Service Club I spoke to the orderly in charge of the Service Club, and I was, what I was trying

to do, was to put across to him to close the place a little before time and I was there when the M.P. on duty in the Service Club that night started running the men out, and I was practically the last one out of there, when all my men had gone. I was interested in getting them back in so they could draw their last minutes' supplies.

Q Did you think that was some time about eleven o'clock this particular night?

A Well, it was between a quarter to eleven and eleven o'clock, sir.

Maj. MacLennan: All right, thank you.

President: Any further questions?

REDIRECT EXAMINATION

Questions by Defense:

Q I have just one question that I would like to ask to clear something up. Who was Sergeant Aubry?

A He is First Sergeant of the 650th Port Company.

Q The same Company that occupied the barracks or the orderly room with the 651st?

A Yes.

Q Where is he at the present time?

A He is overseas.

Defense: That is all.

Trial Judge Advocate: I have a question.

RECROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant, you told the Court about talking to some of your men about not going down to that area?

A That's right, sir.

Q Do you know the names of a single one of those men you talked to at all?

A No, sir.

Q How long did you talk with them?

A It was a matter of minutes. As soon as I found out what it was all about I told them to get back in the barracks and not to go down in that area and it was so dark, somebody might hit them, and with that I started back to the barracks.

Q Well, you said you talked with quite a few of them?

A I don't know; it was quite a few.

Q Can you give us some idea of about how many it was,

Q was it fifteen or twenty?
A Fifteen or twenty.

Q They were all right around you?
A No, sir: out on the steps and in front of the barracks.

Q How close to you?
A I was out on the road or, it is a road and a walk.

Q How many feet away from them?
A Eight or ten feet.

Q But you cannot give us the name of a single one of any of these men that you talked to?
A No, sir. I was talking to several.

Q You don't remember a single member in that crowd?
A No.

Q But you remember passing Sergeant Graham?
A Yes, I remember passing Sergeant Graham. I spoke to him.

Q He spoke to you, did he?
A He spoke to me, and I spoke to him.

Q And you spoke to these men in front of you, there at the barracks?
A Yes, sir. Lots of these men were wearing helmets, sir.

Q Yes, quite a few of them were wearing helmets, weren't they?
A Yes, sir.

Q Did you see anything in their hands at the time you talked with them?
A No, sir.

Q None of them had anything in their hands?
A No, sir; not that I saw there.

Q But a number of them were wearing helmets?
A Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have nothing further.

President: Any further questions? Witness will be excused.

Witness excused.

Corporal T/5 Herman Lee Redley, 651st Port Company, a witness for the Defense, was sworn and testified as follows:

DIREXT EXAMINATION

Trial Judge Advocate: State your name?

The Witness: Herman Lee Redley.

Trial Judge Advocate: What is your grade?

The Witness: T/5.

Trial Judge Advocate: And your organization?

The Witness: 651st Port Company is what I was with.

Trial Judge Advocate: And your Station?

The Witness: I am now at Camp George Jordan.

Questions by Defense:

Q How old are you, Corporal?

A Twenty-six.

Q Married or single?

A Married.

Q Have you any children?

A One.

Q When did you enter the Military Service, Corporal?

A December 23, 1943.

Q December 23, last year?

A Yes, sir.

Q Now, calling your attention to August 14th of this year, Corporal, the night that there was trouble between the colored soldiers and the Italians, I will ask you where you were on or about 11:00 o'clock that evening?

A Eleven o'clock, I was in my mess hall.

Q In the mess hall?

A Yes, sir.

Q How long had you been in the mess hall that evening?

A From 5:30 that evening.

Defense: Can the Court hear him?

Law Member: No, he has got to talk louder than that.

Q Now, speak up, will you, Corporal, so they can all hear you.

A I had been in the mess hall from 5:30 that evening.

Q What were you doing in the mess hall?
A I was in charge of a detail.

Q Yes, but what was the detail doing in the mess hall?
A They were cleaning up the kitchen utensils, and after that they cleaned up the mess hall.

Q Was this a usual or unusual cleaning up that the mess hall was getting?
A Well, the mess hall gets this cleaning once a week for inspection on Friday.

Q The cleaning you were giving it was for inspection?
A Yes, sir.

Q Now, who was in charge of all of the men that were working in the mess hall that night?
A The Mess Sergeant.

Q Who is that Sergeant?
A Ernest Graham.

Q Ernest Graham?
A Yes, sir.

Q Do you recall approximately you left the mess hall that evening?
A I don't know the exact time but I am positive it was after eleven o'clock.

Q After eleven o'clock?
A Yes.

Q Well, tell the Court whether Sergeant Graham went out of the mess hall ahead of you or whether he was in the mess hall after you left?
A Sergeant Graham was in the mess hall when I left him, he was in the mess hall there to lock the door, and I went on to my barracks and within a time of five or ten minutes, Sergeant Graham came in the barracks behind me.

Q Now, show the Court what your barracks was, what is the number of it?
A My barracks is 665.

Q That is this building over here on the corner close to Lawton Road (indicating to map)?
A Yes, sir.

Q Now, did you go straight to your barracks from the mess hall, or did you go some place else before you went down there?
A I went straight to the barracks.

Q Now, how long a period of time was it, did you say after you got in there, that Sergeant Graham came in?

A I said it was no later than ten minutes, I am sure.

Q Now, up to the time that you went into the barracks, and Sergeant Graham followed you in, was there any trouble between the colored soldiers and the Italians that you knew of?

A I don't know, sir, what time that this started, or what time it was over with.

Q No, I don't think you understand me, Corporal. Up until the time that you went in the barracks and Sergeant Graham followed you in, did you have any occasion to know that there was trouble?

A No, sir; not then.

Q When was it you first knew there was trouble?

A Not long after Sergeant Graham came in, a boy out of the office came in.

Law Member: Who?

A (continuing) An office boy, a boy that works in the office, he came in and he gave the alarm at our barracks that there was a fight going on.

Q A fight going on?

A Yes.

Q And what did you do then when you found out there was a fight going on?

A I went to the window.

Q Well, now, come over here, Corporal, and on the map here give the Court an idea of approximately what window you looked out of. There are no windows shown on here, but just about where on the barracks was it?

Law Member: You better explain that, Major.

Q I guess I better, also. Let me show you, now. Here is Barracks 719 in which the 650th Port Company lived, and there is 700, the mess hall, and here is the area known as the Italian area, and here is your Company orderly room here, Building 670, and over here is your barracks (indicating). Now, can you give the Court an idea of whereabouts in the barracks you looked out of the barracks through a window?

A There was a window about there (indicating).

Q About the center?

A Mostly to the front end.

Q Close to the center, but closer to the Lawton Road end?

A Yes.

Q Now, show me again, a little closer if you can?

A I would say the place there. (indicating)

Law Member: Let him put a mark there with his initials if you want to.

Defense: I don't think it is of any great importance, but if the Court wants me to, I will. May I borrow your pencil?

Trial Judge Advocate: Yes, surely.

Q Now, will you indicate there again?

A About right here (indicating).

Q All right. I will put a cross with your initials H.R. (marking on map).

A H.R., yes.

Q Well, as you looked out the window, what did you see, if anything?

A All I could see, sir, was a lot of soldiers standing up not far from the barracks.

Law Member: Saw a lot of soldiers, what?

The Witness: Standing up not far from the barracks.

Q About where? What direction?

A It was between my barracks and the road that leads down in the Italian area from the Fort, Lawton Road.

Q Well, with reference to motor traffic, did you see any motor traffic?

A Yes, sir, there was quite a bit of motor traffic going in and out from down there.

Q Now, was there anyone else that you can recall that was looking out of the window at the same time you were?

A Yes, sir. Sergeant Graham came over and looked out and didn't say anything, and then walked back and Sergeant Lezine, he and I were standing at the same one.

Law Member: How do you spell that, Sergeant, do you know?

The Witness: I think it is spelled L-e-z-i-n-e.

Q Anyone else?

A Sylvester Campbell, he looked out the window. Practically all that was in there and that was up, we all looked out of the window.

Q Do you know whether or not Sergeant Graham ever left the barracks that evening?

A No, he didn't sir.

Q He did not?

A No, sir.

- Q Was there anything particularly that called your attention to Sylvester Campbell being there?
- A Yes, sir. When I came in from the mess hall Sylvester Campbell attracted my attention about arguing about leaving a restricted area and going to a picture show, and I remember he and the other soldiers argued about going to a picture show while being restricted.
- Q How long a period of time did you watch out of the window?
- A I would say just about two minutes, just a short time. I just took a peek, as you might say.
- Q Well, was it when you first looked that you saw vehicles going down or was it afterwards?
- A As I looked out the window, vehicles were going to and fro, away.

Defense: I think you may examine.

Law Member: I just want to get the answer he made there concerning Sylvester Campbell making some remark, I didn't get that at all. Would you back and find that, Mr. Stoddard, and read that to us?

(Answer with reference to Sylvester Campbell and remark concerning picture show was read back by the reporter.)

CROSS EXAMINATION

Questions by Trial Judge Advocate:

- Q Corporal, what time did you say you came in your barracks?
- A Some time after eleven o'clock.
- Q Well, sometime after eleven o'clock is rather indefinite. Do you mean by that very shortly after eleven?
- A I wouldn't say right shortly after, sir, for the reason because the K.P. asked me why we were working them after eleven o'clock. And it was after eleven when he asked me in the mess hall. He had dismissed them by then.
- Q Well, would you say ten or fifteen minutes after?
- A Sometime, yes. I dismissed them after eleven, some time after I dismissed them, after eleven, till I got in the barracks, it was, I would say, it must have been fifteen minutes, or later. It could have been later.
- Q It could have been earlier, too, couldn't it, it could have been earlier?
- A Not with that time, when I dismissed the K.P.'s. I asked the Sergeant if he wanted to look the kitchen

over and see if it was satisfactory to him, and then lock up.

Q And you proceeded directly to your barracks then?
A Yes, sir.

Q So it could have been fifteen minutes or a little bit longer?

A Could have been a little bit longer, yes, sir.

Q You can't be sure how long it was?

A No, sir.

Q What did you do then?

A I went up to the barracks and started fixing my bags.

Q How long did you spend doing that?

A I would say thirty or forty minutes.

Q That would take you to a quarter to twelve or twelve o'clock?

A Yes.

Q Now, had you gone to bed before you heard this traffic or before you looked out the window?

A No, sir.

Q How long had you been in your barracks before you looked out the window?

A I just had gone in the barracks from the mess hall.

Q And when you looked out the window, what did you do?

A When I came in I began to fix my own bag, just as I came in; and then Sergeant Graham came in behind me; then the boy came in, and he gave the alarm.

Q In other words, within a few minutes, a very few minutes after you returned this boy came in and gave the alarm?

A Yes.

Q You looked out the window and saw a large group of men that had congregated by the road, or between Virginia Avenue and Lawton Road?

A Yes, sir.

Q About how many?

A I don't know.

Q About a hundred would you say?

A I couldn't give any idea, just to me it looked like a bunch of men.

Q Was it something like a hundred would you estimate?

A I suppose so, I couldn't say.

Q What is your best estimate?

A I should say around that number, a hundred or more.

Q Did you hear any whistle blow?

A No, sir.

Q You didn't hear a whistle blown?

A No, sir.

Q And you just looked out and you saw this group of men down there?

A Well, I saw a vehicle going in and out down there, down Fort Lawton Road and back.

Q And you stayed in your barracks and did not go down there?

A That's right.

Q You just watched them a few minutes and you lost interest?

A Yes, sir.

Q You didn't care what they did or where they went to?

A That's right.

Q You just looked out for a couple of minutes?

A That's right.

Q Did these men mention anything at all or did they just stand there?

A Well, it seems to me that somebody was there talking to me, I didn't pay that much attention to find out.

Q You didn't see them go anywhere?

A No, sir.

Q You were standing in this group and you watched them a few minutes, and then what did you do?

A I went back to packing my duffle bag.

Q Yes. And then what did you do?

A I went to bed.

Q You what?

A I went to bed.

Q Who all did you see up there with you when you looked out of that window?

A Sergeant Lezine, Sergeant Campbell and I peeked out the window. Sylvester Campbell. And George Washington, he just looked out the window.

Q Yes.

A That is all I can remember. There was some more in there.

Q Well, about how many,---were you upstairs in the barracks or downstairs?

A Our barracks does not have an upstairs.

Q Well, about how many were in the barracks at that time. I mean on that occasion when you were there

packing your duffle bag, how many were in the barracks?

A All of the cooks, which there are, seven cooks, and the K.P.'s, and the office boy was in and out.

Q Well, give us the number of them, about how many were there?

A About twelve of them.

Q Did any of them leave the mess hall,---I mean, did any of them leave the barracks while you were there?

A Not while I was there.

Q That was for how long?

A That was from the time I left the mess hall till I got through with packing my duffle bag and I went to bed.

Q You came in then,---you mean now from the time you left the mess hall until you went to bed, which was about forty-five minutes?

A Yes.

Q And during that period of time you kept track of each man that left the barracks?

A No. I saw those that were there.

Q So you did not see a man leave the barracks for that forty-five minute period?

A Yes.

Q Now, you are telling the Court that you saw none of them leave the barracks during that forty-five minute period?

A Yes, sir.

Q And you looked at this scene down there for just about two minutes was all?

A Yes, sir.

Q And you say you didn't go down where those boys were congregated?

A Yes, sir, I am sure of that.

Q You are sure of that?

A I am positive.

Q All right. After this happened you were put in the stockade?

A Yes, sir.

Q Who shared your tent at the stockade?

A Sergeant Ernest Graham.

Q And who else?

A T/5 Robert Boyd.

Q Was it Boyd, did you say?

A Robert Boyd.

Q Well, you and Sergeant Graham were in that stockade together in the same tent for quite some time, weren't you?

A We were stuck in there, I don't know, sir, about two days, I believe, something like that.

Defense: What was his answer?

Trial Judge Advocate: He stayed there two days or something like that.

Q Well, you were in there a little longer than that, weren't you?

A I was, but the Company left.

Q But for two days you and Sergeant Graham were in the same tent in that stockade anyway?

A That's right.

Q All right, now. Was there a negro soldier by the name of Willie Curry in that stockade?

A Yes, sir; there was.

Q Did you talk with Willie Curry any about this incident that happened down in the Italian area?

A No, sir.

Defense: I don't think that is proper cross-examination, if the Court please. He is going into statements of a different accused on a different date.

Trial Judge Advocate: I am just getting ready to lay the grounds for an impeachment.

Defense: But here, all of the conversation that was brought out was about the night of August the 14th, now Counsel quite improperly went on to show a conversation with Willie Curry; first, with Boyd, and now he is going into a conversation with Willie Curry at a different time.

Law Member: There is nothing brought out about Willie Curry.

Trial Judge Advocate: No, but I have a right to go into it with this witness and go into all phases of this, as he is called for all purposes. He is not called for any limited purpose.

Defense: Well, there is a limit to cross-examination, Counsel.

Law Member: For the purpose of impeachment only, but anything that defines other accused is not going to be allowed in.

Trial Judge Advocate: I am asking him if he is confirming or denying a conversation, and if he denies it, then I am going to impeach him.

Law Member: All right.

Defense: Well, I don't see how he is going to impeach him with Willie Curry, he hasn't laid the proper foundation yet. I don't see how he is going to impeach him.

Law Member: Well, he evidently is bringing this out for the purpose of laying a proper foundation, and it is not for the purpose of impeaching Curry, but for the purpose of impeaching this man, as I get it.

Trial Judge Advocate: Yes, sir.

Q Did you hear any conversation or statement made by Willie Curry regarding this incident of the riot?

A I did, sir, after the Company was leaving we was pulled out of the Company and brought back to the stockade.

Q Then you heard Willie Curry make a statement?

A Yes, I heard Willie Currie say something.

Q And you had talked with Sergeant Graham about this incident when you were all there in the tent together?

A Yes. We were not,---

Q (interposing) Well, I did not ask you to state if they had a conversation, but if you had a conversation with Sergeant Graham.

Defense: I believe he has a right to explain his answer, if the Court please.

Law Member: The answer to that question is yes or no.

Trial Judge Advocate: "Yes," that was his answer.

Q Well, you heard Willie Curry make a statement about this incident?

A Yes.

Q When did you hear him make that statement?

A That was after our company was gone, there was sixty-one of us kept back.

Q Did you hear anyone else make a statement?

A Roy Montgomery was down there.

Defense: Now, just a minute.

Law Member: That statement goes out and the Court

will not pay any attention to it.

Defense: Now, if it please the Court, it is very obvious that he was not trying to lay the foundation for an impeachment. Counsel was merely using that for the purpose of getting something else in the record.

Trial Judge Advocate: Well, I believe he said he first denied he heard Willie Currie make the statement and now he said he did.

Q Did you hear anyone else make any statements down there?

A No, sir; I didn't.

Law Member: Now, let us not quibble. The answer to this question and these questions are yes or no.

Q What was your Company?

A 651st.

Q Now, let's see, Sergeant Ernest Graham is from that Company, of course, and T/5 Robert Boyd is from that Company?

A Yes.

Q And T/5 Willie Curry is from that Company, isn't he?

A Yes.

Q And Private First Class Roy Montgomery is from that Company, isn't he?

A Yes.

Q Now, what did you hear Willie Curry say when he made that statement?

Defense: Same objection, if it please the Court.

Law Member: If this is for the purpose of impeachment of this witness the question will be allowed, but anything that Curry said will not be considered by this Court on the question of guilt or innocence.

Trial Judge Advocate: I am going to let the Court limit it, but I do want to say to the Court that obviously any witness that is called in to the stand, the Court in its discretion has a right to hear testimony on any point. There is no hard and fast rule. If there is some advantage taken of anybody by virtue of that, it would be different, but there is no advantage being taken of anybody.

Law Member: But you are limited to matters that have been brought out on direct examination, unless you attempt to attack his credibility. Then, on the question of impeachment you may ask other questions that have not been brought out on direct examination.

Trial Judge Advocate: If it please the Law Member, that is not the rule we have been invoking here. Time and time and time again Counsel went into matters that I did not touch on in my direct examination.

Law Member: You never objected to it.

Trial Judge Advocate: Oh, perhaps once or twice, I did call the Court's attention to it, but I think that is discretionary with the court and I think the court has the right to hear the testimony of any witness on any point and then if there is some type of advantage being taken of it or by it, it would not be proper and could be stricken. However, I am willing to limit this on the question of impeachment. However, I am going to ask the Court if this question arises again in connection with the other witnesses, I want to be heard from.

Law Member: Well I am sure the Colonel is going to be heard from, so I think we better take that up before we hear the substance of that conversation right now.

Trial Judge Advocate: Well, that suits me. I happen to know what the answer is going to be, at least what I hope it will be, and what I understand it is to be. The point I am making is this: this witness takes the stand to testify to whatever facts he knows are material.

Law Member: And which are brought out on direct examination.

Trial Judge Advocate: No, no; not necessarily. That is where we differ. I don't think there is any hard and fast rule on that. Ordinarily, if I remember what the Manual says, it says,---and ordinarily, as far as the accused are concerned, there is no question about it, because even there a wider latitude is permitted,---but we happen to have a witness here on the stand who is not an accused. Let me see if I can find the place in the manual where that is.

President: Court will take a brief recess.

At this point a short recess was taken after which proceedings were resumed as follows:

President: Court will come to order.

Trial Judge Advocate: If the Court please, I have checked hurriedly through an index of the Digests and I don't find any decision touching on that point. I can tell the Court frankly I have once before discussed that point and my present recollection is there are decisions on that and my recollection is on those decisions, that it is discretionary with the Court.

I would like to have the Court let me have the oppor-

tunity of looking and trying to find those decisions, and if I cannot find them, I am sure Defense Counsel will not object to letting the witness appear later for that purpose alone, if I cannot find them right now. I will not go into anything other than that. And I can do that tomorrow, I believe. Do you have any objection to that?

Defense: No.

Law Member: We have here forty-two accused. The general rule is that on cross-examination, you are limited to cross-examining a witness on matters that are brought out on direct examination. Do you agree?

Trial Judge Advocate: As to accused, no, sir. A wider latitude is allowed on cross examination of accused.

Law Member: But this witness is not an accused. That is the general rule, isn't it, Counsel?

Trial Judge Advocate: That is the general rule, yes. But the point I am making, if it please the Court, is that I feel the Authorities have held it is discretionary with the Court, and if it is discretionary with the Court I want to ask the Court to exercise its right that way, and I don't have the opinions now to show that it is discretionary, but I will go in and find those, and I ask that that one point be preserved and left open until that time and I can go into tomorrow.

Law Member: You have no objection to that?

Defense: No, I have no objection. I think the Court is entirely right. I don't think there is any discretion at all to the Court except on matters to test the credibility of a witness. Otherwise, you are limited strictly to matters touched on in direct examination.

Trial Judge Advocate: Well, anything he has testified to, that pertains to the matter he is testifying to generally. But it is true with this particular witness the man relates to a subsequent conversation,---not something that transpired that evening and, in that manner,---

Law Member (interposing): But under the guise of testing the credibility of a witness, it appears to be your intention, I assume to bring into the record possibly some conversation incriminating to one of the 42 accused. Now, I don't believe,---and this is my own opinion at the present time,---I don't believe that should be allowed in under the guise of testing the credibility of this witness now.

Trial Judge Advocate: It would be limited to that.

Law Member: Well, this is only one witness. I don't know but I suppose you have got many others and all this

evidence is coming in with its limitations, I admit, but nevertheless there are cases which I am sure you are acquainted with which will hold there is a limit to that amount of testimony that anybody can produce.

Trial Judge Advocate: If it is properly limited under a construction of the Law Member, then there is no harm to it, because the Court would be considering it within the bounds of that limitation.

Defense: There isn't any reason why,-- they have a transcript of his testimony here, and they could have called him any time they wanted to, there isn't any reason why they could not have called him.

Trial Judge Advocate: We reserve the right to call any witness we want to.

Law Member: The Trial Judge Advocate wishes to suspend with this witness now as I understand it to present to me decisions which will convince me, or indicate I am wrong in the ruling I have made, and I think his request to suspend is very proper. Subject to objection by any member of the Court the examination of this witness will be suspended until the morning.

Trial Judge Advocate: It is only as to that one matter, and then I am through with him on anything else.

Defense: Is the Court going to adjourn?

Law Member: No.

Defense: I would like to have the testimony of this witness completed before going on.

Law Member: On, no, it is only that one point that is involved. I don't think that would be necessary, Major. He did that for you. Subject to objection by any member of the Court the examination of this witness will be suspended until tomorrow morning, at which time the Trial Judge Advocate will present me with authority or decisions as he may find.

President: Any objections? There appear to be no objections. The witness will be excused for the present.

Witness excused.

Defense: You want him to come back in the morning?

Trial Judge Advocate: Maybe some members of the Court wanted to ask him questions on these other points of his testimony. The reason I mention that is, he will not be placed on the stand again unless there is some change in the Court's ruling, and I thought maybe some member of

the Court wanted to question him on some other phase of his testimony.

Law Member: If I understand it correctly, you are going to submit authorities to me in the morning?

Trial Judge Advocate: If I can find them I will.

Law Member: Have you any redirect examination, Major?

Defense: No, I won't have any, if it please the Court.

President: Any member of the Court have any questions?

Maj. Crocker: I would like to ask one.

President: All right, as you were.

(Corporal T/5 Herman Lee Redley, resumes the stand and testifies further as follows:)

EXAMINATION BY THE COURT

Questions by Maj. Crocker:

Q Corporal, you stated when you were looking out of the window Sergeant Graham was looking out also?

A Yes, sir.

Q And Sylvester Campbell?

A Yes, sir.

Q Do you remember anybody else looking out the window at that time?

A George Washington, sir, I remember him.

Q Now, when this conversation took place that you heard Sylvester Campbell having with somebody else,---when was that?

A That was as soon as I entered the barracks from the mess hall.

Q That was before you looked out the window?

A That's right.

Maj. Crocker: All right.

President: Any further questions by any member of the Court?

Maj. MacLennan: There is one question.

Questions by Maj. MacLennan:

Q I believe you testified, Corporal, that when you got

back to the barracks and had been there for some time you had occasion to look out the window on the north side of the barracks, did you so testify?

A I don't know, sir, the direction, sir, what side it was. I don't know the north.

Q Was it the side towards,---you looked out towards Lawton Road, you could see the road?

A Yes, sir; right down the road.

Q And you saw vehicles going down and coming back?

A Yes, sir.

Q Could you recognize any of those vehicles as having M.P.'s in them?

A No, sir. I couldn't tell you who was in them.

Q You don't know whether they were M.P. cars or not?

A No, sir: that is right.

Q Earlier, when you first arrived there at your barracks and started to pack, a man came in and said that there was trouble going on?

A Yes.

Q About how long had you been in the barracks when this man came in to the room?

A It wasn't very long, sir. I hadn't long entered the barracks. It was between the time of five and to ten minutes, between that time.

Q Had you noticed any noise or commotion before that time?

A No, sir; I didn't.

Q After this man called the attention of the people to that, there was trouble down there, could you then hear any noise?

A There wasn't no noise then.

Q You could not hear it?

A No, sir.

Maj. MacLennan: I believe that is all.

REDIRECT EXAMINATION

Questions by Defense:

Q Corporal, the cars that you saw going down the hill, could you see where they went to?

A They was going down to the Italian area.

Q Down to the Italian area?

A Yes.

Defense: That is all.

Law Member: Well, you mean, they were going toward

that direction?

The Witness: Yes, sir; in that direction.

Defense: Could you tell where they stopped?

The Witness: No, Sir.

EXAMINATION BY THE COURT

Questions by Maj. MacLennan:

Q About how long would you say, from your best recollection now, how long had you been in the barracks before you looked out and saw these cars going by?

A Well, the best I could give would be between ten and fifteen minutes.

Maj. MacLennan: That is all.

RE CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q I have another question, too. Did Sergeant Graham come into the barracks after you came in or was in the barracks?

A He came in after I was in there.

Q How long were you in there before he got in?

A Between five and ten minutes.

Q I want to ask you this: You told the Court that nobody left that barracks after you came in?

A As far as I know.

Q Well, you told the Court that nobody left there after you came in, wasn't that your testimony?

A Well, after I went to sleep, I don't know.

Q But you said it was forty-five minutes before you went to sleep?

A Yes, sir. Didn't nobody leave.

Q Nobody left during those forty-five minutes?

A No, sir.

Q I want to ask you if you were not examined by Lt.Col. Curtis L Williams on October 2, 1944 about this matter?

A Col. Williams?

Q Yes, Col. Williams. Do you remember a Lt Col Curtis Williams?

A Yes, sir; I was.

Q He asked you some questions and you answered those questions?

A Yes, sir.

Q Did you answer them truthfully?

A Yes, sir.

Q I want to ask you if, in the course of that examination he didn't ask you the following questions and if you didn't give the following answers: "Q Now, before you got in bed, was there any of the boys in your barracks that left the barracks and went down toward the Italian area? A Before I got in bed? Q Yes, after you heard about the fight? A I didn't pay that much attention." Wasn't that your answer?

A I don't remember what answer I gave.

Q You would not say you did not give that answer, would you?

A I wouldn't say, sir: I don't remember.

Q Well, didn't he ask you during any of the time whether any of the men left the barracks and went down to the Italian area before you went to bed and you said you didn't pay much attention, wasn't that your answer?

A Well, that's been so long ago, I couldn't be positive whether I did give that answer.

Q It has been a long time. Well, is your recollection better on October 4, 1944, or is it better on December 8, 1944?

A Quite naturally it would be better then.

Q Yes, quite naturally it would be better then.

A Yes.

Q And you don't say that you did not give these answers, do you?

A I couldn't say, because I answered every question that he asked me.

Q Every question he asked you, you answered it truthfully at that time?

A Yes.

Trial Judge Advocate: That is all.

Defense: That is all the questions I have.

President: Any further questions? Witness will be excused.

Witness excused.

Defense: It appears for the first time, now, that the Inspector General's investigation has been made available to counsel and as the Court will recall there are several occasions when I have asked for these reports, and it has been told to me they were so confidential and highly secret that counsel has not even been allowed to see it, and, now, I am asking for the same privilege that Counsel has been given, that the report of the In-

spector General's investigation be made available to the Defense.

Trial Judge Advocate: The only thing you can do is ask the same authority that I did, and that made it available to me, Major. And if you can get the same authority, you can get this, but don't ask me. I have no authority to turn it over to you.

Defense: I did not ask you. I asked the Court.

Law Member: I don't have that authority, Major. The authority for that must come from the Secretary of War.

Defense: Oh, no. It don't have to come from the Secretary of War. It has lost its confidential nature once it is made available to him to use in this court room. There is only one thing he can do now, if he uses it for impeachment purposes, and that is to bring it in here and make it available to us.

Trial Judge Advocate: No.

Law Member: No, not necessarily. The only part he uses for impeachment, only that portion he refers to might be made available.

Trial Judge Advocate: Well, Counsel, it will treat you better than you treated me when I asked you for yours, and show you the part that I referred to.

Defense: Oh, I don't care about that. I care nothing about the recommendations of the Inspector General or what action or anything like that, what was done by the Inspector General, but the testimony that was taken there with respect to the occurrence of these rioters that evening, I think I have got a right to see that and use it. I mean, Counsel is not on a different plane than I am. I am representing these men and I have as much right to see the government records as Counsel has.

Trial Judge Advocate: No, that is where you are wrong, Major. That is not a correct statement. We are not in the same situation. I am a government agent and you are not, and I have access and am supposed to know things that you are not. As far as examining anything in Court, as I told you, I will treat you very fairly, and better than you did when I asked you for your record, and let you see anything that I use. But, whoever you get authority from to use this, and however you get it, or wherever you get it, you will have to get it from the Secretary of War, or whoever can give it to you. But I cannot give you that authority nor can I let you have this.

Law Member: Do I understand you will turn over to the Major the statement in toto, on any statement you

use?

Trial Judge Advocate: No, sir; I cannot turn over in toto any statement. All I can do is let him see whatever I use and read, and that portion only. I will have no objection to that. There are matters in here, however, that he is not privileged to see, I am convinced of that. They are matters that don't pertain to the issues in this case, and all I can do is, as I say, on matters that I use, I will treat him better than he treated me, and let him see that. He can remember I asked him to let me see his statements, but, he can come and look over my shoulder while I am examining the witness, and see that portion. He can do that, but that is as far as I can go.

Defense: Well, I am not interested in that. And as fond as I am of Counsel, I don't wish to stand there looking over his shoulder. When he told me he had not asked for this, and when he told me it was not made available, I was not going to ask for it, but now, when certain parts of this testimony have been made available to this Court, it is no longer confidential and it loses its confidential and secret nature, and it certainly looks to me as though I should be able to use it, also.

Trial Judge Advocate: Well, Major, you know that no one here in this court room independently has the right to turn anything like this over to you. The President or any member of this Court would not ask one counsel or tell him to turn statements that he has obtained for use of the other counsel and this is the same effect. It goes further than that in this instance, though.

Defense: I have not asked Counsel for anything that you have personally taken from any witness. These are matters that took place apart from your investigation and I am asking for something now that was taken before you even you were involved in this and before I was involved in it.

Trial Judge Advocate: Well, right on that last point, Major, that is a very good reason that you would not have a right to this, and neither would I,---while I might have some right to turn over something to you that I have taken, it is all the more reason that I cannot turn over to you what someone else has taken.

Defense: Well, I think the Court has the authority to make that available.

Trial Judge Advocate: Oh, no; they don't. But as I tell you, whatever I use counsel can see. Now that that is over with, where do we stand?

Defense: I don't know that it is over with.

President: The President of the Court will take

steps to endeavor to secure proper authority in writing for you to examine that writing.

Defense: Thank you. I want the Court to understand that any recommendations or actions that have been made or taken by the Inspector General, I am not asking for that. All I am asking for is any testimony that has been taken with respect to this Court Martial.

Trial Judge Advocate: Oh, no, that is entirely improper. Whatever I may be using is a different matter, but certainly not whatever testimony has been taken in connection with this matter. Counsel is enlarging on that now because, I don't think any such measure would be taken or accorded him and frankly I think I would oppose that. Whatever I use, if anyone wants to undertake to obtain the use of that for Counsel, that is an entirely different matter, but I don't think, anything I don't use, should be attempted to be produced in Court.

The court will recess to reconvene at 9:00 a.m., tomorrow morning.

(At this point, 4:23 p.m., the course was recessed to 9:00 a.m., December 9, 1944.)

LEON JAWORSKI
Lt. Colonel, JAGD
Trial Judge Advocate

Fort Lawton Staging Area
Fort Lawton, Washington
December 9, 1944.

The court met, pursuant to adjournment, at 9:00 o'clock, a.m., all of the personnel of the court, prosecution, and defense, who were present at the close of the previous session in this case, being present.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Is the Defense ready to proceed?

Defense: Defense is ready.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused were present and all members of the court, as well as the personnel representing the Prosecution, and the personnel representing the accused.

Law Member: Col. Jaworski, do you wish Corporal Redley recalled?

Trial Judge Advocate: No, sir. In view of what I mentioned a few minutes ago, I don't wish to recall him.

Law Member: Then for the record the question is withdrawn, or did I rule on it?

Trial Judge Advocate: That is correct. No, sir, I don't think so, because I consider it entirely moot and if a question was presented which was unanswered upon which you had not made a ruling, I am withdrawing it.

Defense: At the close of the evening yesterday the Defense made a demand that the records of the Inspector General pertaining to the investigation of this riot be made available to this Defense, and I want the record to show the Court informed of the fact that the matter has been satisfactorily adjusted as far as the Defense is concerned with the Trial Judge Advocate who has agreed to make statements that he uses available to the Defense.

Law Member: Then your demand is specifically withdrawn?

Defense: Yes, I specifically withdraw that request and Counsel has very kindly cooperated with me in giving me what I have asked for. Will you mark this as the next exhibit?

The document above referred to was marked Defense

Exhibit K for Identification.

Trial Judge Advocate: If it please the Court, --

Defense: (Interposing) Excuse me. If the Court please, at this time I wish to offer in evidence what has been marked Defense Exhibit K for Identification, which is a letter of commendation, signed by Capt. James R. Jones.

Trial Judge Advocate: I don't believe you have stated yet what the substance of it is.

Defense: No. It is signed by Capt. James R. Jones, and it is a commendation with respect to Staff Sergeant Graham.

Trial Judge Advocate: Now, if it please the Court, that is an ex parte matter that has not been brought up properly, and the party is not available to me for examination. It is not even an affidavit. There is no proof in the record it was really given, but merely that this letter is purporting to be over the signature of some officer, and I object to it on the grounds that its authenticity has not been proven, and, furthermore, that it is wholly ex parte.

Law Member: The question of the authenticity, if you are questioning that, that is all I am interested in.

Defense: Well, I can't call the Captain, but the Manual provides for putting in evidence of good character, as well as Military record and standing, and a latter or document of this nature is not excepted.

Trial Judge Advocate: That is not sworn.

Law Member: Well, assuming it is an unsworn statement.

Trial Judge Advocate: But that is going way beyond that now.

Defense: Well, as I understand it, according to Military Law letters of commendation or recommendation go before the Court for what they are worth, on the issue of character.

Trial Judge Advocate: Well, if you are going to offer some proof, that is different. But you have not offered it.

Law Member: You have offered it, and you have objected to it. At the time you prove the signature I will rule on it. What is the number on that Exhibit?

Defense: This is Defense Exhibit K for Identification. I will call Private Jefferson D Green. Does the Court wish to explain his rights to him?

Law Member: Green, will you stand up here a minute? It is my duty at this time to explain to you that you have certain rights as a witness in a military court martial. First, you may be sworn as a witness, just like a witness in any other case and testify like a witness in any other instance, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness by both the Prosecution and the Court. And if in your said testimony you might fail to deny or explain specific facts of an incriminating nature which have been brought out by the evidence, then the Trial Judge Advocate can comment on that fact in his final argument to the Court. Or, two, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing, or either by yourself or by your counsel. Such an unsworn statement is not evidence in a strict sense, and you cannot be cross-examined on it, but the Court will give it such weight and consideration as it feels it warrants, and in a joint trial like this where there are several accused, such unsworn statement by you is not evidence against the others.

Or, three, you have the right to remain absolutely silent, making no statement, sworn or unsworn. In such an event, that is, if you remain silent, no comment whatever may be made by the Trial Judge Advocate on your failure to so make a statement, nor can such fact be taken into consideration in any way by the Court in determining your guilt or innocence.

Now, Green, do you thoroughly understand those rights as a witness which I have explained to you?

The Accused: I do, sir.

Law Member: And have you talked this over with your counsel, Major Beeks?

The Accused: Yes, sir; I have.

Law Member: And you desire now to take the stand as a witness, sworn in your own behalf.

The Accused: Yes, sir, I do.

Jefferson D Green, 650th Port Company, a witness for the Defense, was sworn and testified as follows:

Trial Judge Advocate: State your name?

The Witness: Jefferson D Green.

Trial Judge Advocate: Your grade?

The Witness: Private.

Trial Judge Advocate: Your organization?

The Witness: 650th Port Company.

Trial Judge Advocate: Your station?

The Witness: Fort Lawton, Washington.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you?

A Twenty-eight years old.

Q Are you married or single?

A I am single.

Q Where is your home?

A San Antonio, Texas.

Q How much education have you had?

A High School.

Q Now, tell the Court what your occupation was before you entered the Military Service?

A Chauffeur.

Q And when you entered the Military Service, when was that?

A In 1942, October.

Q Have you ever been convicted of a crime of any kind in civilian life?

A No, sir; I haven't been convicted.

Q Have you ever been convicted before a Court Martial at any time?

Trial Judge Advocate: Now, if the Court please, I don't think it is proper to go into that at this time.

Law Member: I don't believe it is proper. He is making his character an issue.

Trial Judge Advocate: We have not made it an issue.

Defense: I don't think that is necessarily right. I think the Court has a right to know what this man's background is and what he has been and what he has done since he has been in the Army. If he has had a conviction and wants to tell the Court about it, I think it is

perfectly proper that he do so.

Law Member: Well, if you wish to do it, the objection is overruled.

Trial Judge Advocate: Well, I don't think it is proper to do it at this time. As a matter of fact the question of any previous convictions is something that ought not to be gone into at this time. I could not go into it.

Law Member: I know you couldn't.

Trial Judge Advocate: Well, I don't think it is the proper thing for Defense counsel to go into at this time.

Defense: Well, if there is any objection to it I don't think it is of that much importance for me to create an issue on it.

Trial Judge Advocate: Well, I did not object to the question as to any conviction in civil life, but I seriously doubt whether the matter could be gone into as far as the Military record is concerned.

Defense: Well, I can see where you couldn't at this time, but if there is any objection to it, I will withdraw the question. I don't think it is of that much significance.

Q Now, Green, calling your attention to the night of August 14, 1944, when there was trouble between the colored soldiers and the Italians at Fort Lawton. I will ask you where you were at the time that you first knew that there was some such trouble?

A I was upstairs in 719 in bed.

Q Now, what barracks did you live in?

A 719.

Q And did you live downstairs or upstairs?

A Upstairs.

Q What time, Green, did you go to bed that evening?

A It was kind of late and I wouldn't be able to give you the time, sir, but I know it was late, very late.

Q Well, just in a general way, where had you been during the course of that evening? Now, don't detail to the Court all of what you had been doing, but just where you had been, and what you had been doing just before you went to bed?

A I had been at the East Gate, sir.

Q You had been down at the East Gate?

A Yes, sir.

Q For what purpose?

A I was waiting for some girls to come out.

Q Were you alone or were you with someone?

A Yes, sir. I was with Alvin Clarke.

Q Now, while you were down there at the gate, did the girls arrive or not?

A No, sir; they didn't. That is why we stayed so long.

Q Then what did you do?

A Went to the hospital.

Q What took place in the hospital?

A We had to,---Alvin was using the telephone at the hospital.

Q Do you know about what time that was, if you know, and if you don't know just say so.

A I don't know, sir.

Q Then what did you do after you went to the hospital?

A Well, I left him. He was trying to get some number or something. It was so long, I left him in the booth and I came in alone.

Q You mean you went back to your barracks?

A Yes, sir; I did, sir.

Q Now, tell the Court what the first information that you had was with respect to any trouble that took place that night on August the 14th?

A Well, I have heard,---I did hear a lot going on downstairs, but I didn't know what it was. And I did hear whistles blowing, but I still was in bed. I wasn't asleep. I had went to bed and hung my clothes that I had pulled off on the head of the bed, and I stayed there, I don't know, just exactly how long, I stayed in bed hearing all this noise. But I didn't come,---I didn't go right out.

Q Tell the Court what you did there.

A When I did,---I got up and put on my clothes and did come out, I come out and there was a big crowd there.

Q You say you came out. Now, what do you mean by that, you came out of where?

A I came out in front of Barracks 719, came downstairs.

Q You mean you came out in the street in front of 719, or just out on the porch, or just what do you mean?

A I came out close to the sidewalk. I don't think I even hit the sidewalk.

Q Tell the Court what you did then.

A Well, the First Sergeant, was telling the men to go

inside and someone, he looked like, I took it to be Lt Kapitz, I took it to be him, to be assisting the First Sergeant. I could be mistaken.

Q When you mentioned that Lieutenant, who do you have reference to, one of the officers of your Company?

A One of the officers of the Company.

Q For the record, do you know how that name is spelled?

A (No response.)

Defense: All right. Will you go on?

A Well, I came on back in, too. And that is just about all I knew of the fight. I did hear a lot of boys talking about it, but I am new in that Company at that particular time. I don't know any of the boys very well, and I couldn't see who said this or who said that. Then I did hear what had happened, but I can't tell who it was.

Q Now, I want you to tell the Court, Jefferson, whether or not you ever at any time that evening went down to the Italian area?

A No, sir; I never did go down to the Italian area. I haven't ever been there. The first time I have been there was with the Court.

Q All right. Now, have you ever made a written statement about your activities on that evening?

A Yes, sir; I have.

Q Who did you make that to?

A I give them to Sergeant Young and Major Manchester.

Q Is there anything in that statement that you gave that is not entirely correct?

A I wouldn't say that it,---I think that everything that I said was absolutely true.

Q You think everything you said was absolutely correct. Calling your attention to your return from the hospital, was there anything you said in the statement about your return from the hospital that is not absolutely true?

A Yes, sir; that is true. Maybe, I don't understand you, sir.

Q Well, in the statement that you gave, did you make any mention of your returning from the hospital to your barracks?

A Oh, I made a technical error. In a statement that I said, I said that Alvin Clarke and I came back from the hospital together, when I was asked. But I wasn't,--- I said without thinking, I told the authorities, the investigators that I came back to the barracks with Alvin Clarke.

Q Well, what is the fact on that?

A The fact is I left Alvin Clarke at the telephone and came back alone.

Q Are you suffering any physical ailment at the present time?

A Yes, sir.

Q What is that?

A I have been suffering with a headache. When I started out in New Orleans and in Alaska and here, I have been to the hospital quite a good many times for it.

Q Have you been to the hospital during the course of this trial?

A Yes, sir; I have been, twice.

Defense: I think you may examine.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Private Green, you are telling the Court now that you were not in the Italian area on the night of August 14, 1944?

A Yes, sir.

Q And you are not making any technical errors when you say that, are you?

A I know that for sure, sir.

Q You know that for sure, do you?

A Yes, sir.

Q Now, what time did you get to your barracks and go to bed, as you say you did?

A Well, sir, I didn't keep up with the time, I really don't know the time.

Q No, I know you don't know, but I am wondering if you cannot tell the Court about what time you went to bed?

A Well, I could be wrong. You see, you want the absolute truth and the facts.

Q Oh, yes, and I want you to give us the approximate time.

A Well, I couldn't even give you the approximate time.

Q Well, had you heard any commotion outside before you went to bed?

A When I went to bed I didn't hear anything, but when I went into the barracks it was something going on, it looked like turning out at the mess hall.

Q Well, you went to your barracks before you went to bed, of course?

A I did.

Q And after you reached your barracks, when you got to the barracks, you say you heard some commotion outside?

A When I got to my barracks? No, I didn't say that I don't think.

Q Well, you mean you had gotten to your barracks and then several minutes elapsed, and then you heard some noise out there?

A It was a pretty good while, I think.

Q Oh, it was a pretty good while. Well, how long had you been in your barracks before you heard any commotion outside?

A I'll tell you the truth, I am a poore stimator on time.

Q Well, so am I, but I wonder if you could give us just some idea of how long you had been in your barracks before you heard this noise outside?

A I couldn't very well do it, sir.

Q But you hadn't gone to bed when you heard that noise?

A I had, when I first went to the barracks, went straight to bed.

Q Then you had gone to bed before you heard any noise outside?

A I said so, sure.

Q And you were just laying in bed wide awake?

A I hardly ever go to sleep when I go to bed right away, from what I am suffering from now.

Q Well, you just kind of laid there awake, but you don't go to sleep, is that it?

A That's right, sir.

Q Well, while you were resting there you heard this noise?

A I did.

Q What did you do when you heard this noise?

A I didn't do anything but lay there.

Q How long did you lie there after you first had heard this noise?

A I laid there a pretty good while.

Q Now, what do you mean by "pretty good while"?

A Well, I don't know how long I laid there because I'm used to laying in bed every night. I don't know when I go to sleep myself.

Q Well, did you ever get up?

A I did get up.

Q What made you get up?

A Because I wanted to see what was going on, what the big racket was that was going on outside and automobiles and everything, and the lights I could see out on the street.

Q Did you hear any screaming out there?

A I heard noise. And talking, and just a bunch of fellows talking loud. You couldn't help but hear.

Q Well, did you look out the window?

A I looked out the window, and I seen automobiles traveling, going straight down the street from where I was sleeping.

Q Well, how long did you look out the window?

A Just a second, and when I got up,---that is what made me get up, to see exactly what was going on.

Q Then after you looked out the window you decided to put on your clothes?

A I decided to put on my clothes and go downstairs.

Q Why did you decide to put on your clothes and go downstairs?

A Because I was curious and I wanted to know exactly what was going on.

Q You were curious about what? What did you see that made you so curious?

A Of course, I had heard the whistle and everything blowing.

Q Oh, you did hear the whistles blowing?

A I have stated I did hear a whistle blow.

Q I am sorry, I must have overlooked that and not heard it, but you did hear a whistle blowing?

A It was way before that time; before that time.

Q Now, that whistle blowing was one of the things that made you get up and go downstairs, wasn't it?

A No, sir. It didn't make me go up and go downstairs. I had stayed in bed. I didn't get up.

Q You stayed where?

A In bed.

Q All right. But this whistle blew and you still stayed in bed?

A That is correct, sir.

Q Well, why didn't you pay any attention to that whistle?

A I am not accustomed to making formation myself.

Q Then that was a formation whistle that blew; wasn't it?
A That's correct.

Q All right. Now, you heard the whistle, but you didn't get up. When you hear the whistle blow usually do you do that, do you stay in bed?
A Yes, sir; I did.

Q Well, now what was it that made you get up?
A I got up because I was curious.

Q I know that, you said you were curious, but you were not curious when you heard the whistle blow, because you didn't get up then did you?
A No, sir.

Q Well, just what happened after that that made you get up?
A Well, like I have told you in my statement, I told you that I heard that the men were going up and downstairs during that particular time and saying that the Italians had knocked out one of our own boys and I didn't get up for that, and after awhile, one come up and said, ---he was saying an Italian had knocked out one, and I didn't get up, and I didn't really think anything of this till I got up the next morning, really; and that is exactly the reason why I got up and went downstairs.

Q You say one of the boys came running in and said one of the Italian boys,---
A (interposing) Not one of the Italian boys, but one of our boys, came in and said he had got knocked out.

Q And he said "everybody out"?
A No, he didn't say that.

Q But you do remember one of them saying, one of our boys was knocked out?
A Yes.

Q You didn't get right up out of bed then?
A I didn't get right up.

Q You just waited a little while in bed?
A I was in bed when the next one came in.

Q Well, I'll get to the next one pretty soon. The point I am getting at now, I want this testimony to be clear before this Court. Now, you heard this one boy come running in and say "One of our boys is knocked out," and you still continued to stay in bed?
A Yes, that's right.

Q You still were not curious enough at that point to get out of bed?
A I'm not the only one that didn't get out. There's been

more that didn't go out.

Q Oh, I am sure of that. But I say, you still didn't get out of bed after this one fellow came up and said one of our boys has been knocked out, you still stayed in bed and then along comes another one and says another one of our boys is knocked out, or something like that, and then, did you continue to stay in bed then, or, did you get up then?

A I stayed in bed.

Q Oh, you still stayed in bed. Well, the fact that the second one had been knocked out, came in and said he had been knocked out, someone had been knocked out, that didn't even make you get up or didn't make you curious enough to want to get up and go downstairs? That is absolutely right?

A Yes.

Q Now, tell us what made you so curious after that as to make you go downstairs?

A What made me so curious was after seeing the automobiles, the reflection of the lights of the automobiles passing, and seeing them going straight down and then going back, and there was a crowd in front of 719. That is what made me curious, wanting to see what was going on.

Q Well, did that happen after the report that the second boy had been knocked out, this traffic you are talking about?

A Yes, sure, all of it happened after that.

Q And after you saw all of this traffic and a crowd down there,---

A (interposing) In front of 719. I did not see the crowd myself. I heard it, I couldn't see it.

Q And then you went downstairs?

A Sure, I went downstairs eventually.

Q What barracks did you live in?

A 719.

Q When you went downstairs did you see the crowd out in front of Barracks 719, then?

A Yes, sir; I seen the crowd.

Q But you didn't see it from upstairs?

A No, sir, I didn't see it from upstairs.

Q That crowd you are sure was in front of 719?

A I am sure.

Q And it was not the crowd that was down on Lawton Road and Virginia Avenue?

A I don't know where they come from, it might have been

some of the men from the barracks, but when I came down there was a big crowd in front of 719.

Q I asked you if the crowd in front there was the crowd that you say you saw at Lawton Road and Virginia Avenue?

A The crowd I saw was in front of 719.

Q Well, you say that crowd was in front of 719, and that was after the second report came in that a colored boy had been knocked out?

A It was a little while after.

Q So you went downstairs? How long did you stay downstairs?

A I didn't stay downstairs over two or three seconds.

Q What did you do during those two or three seconds?

A Well, I heard,---I heard the First Sergeant, and seen the First Sergeant telling the boys to go inside and someone else I took to be Lt Kapitz was assisting the First Sergeant.

Q All right. That is all that you saw and all that you heard while you were downstairs?

A That's right.

Q Now, you went downstairs for the purpose of satisfying your curiosity as to what happened?

A That's right.

Q And you didn't satisfy your curiosity, did you?

A I think I did.

Q Well, you told us all you knew about this was that the First Sergeant merely told you to go to bed?

A He didn't tell us to go to bed; he told us to get inside.

Q All right. That is a technical error I guess on my part. He told you to go inside in the barracks. All right, now, that is all that you told the Court that the First Sergeant told you, you said you were just there two or three seconds, is that right?

A That's right.

Q And then you went back upstairs without even knowing what had transpired?

A I went back upstairs, not hearing what had transpired from down where I was, but any common sense would tell you I could get the information from the men that was going upstairs.

Q But you didn't get that information until you got upstairs?

A Well, I went down and I heard men making comments on

my way back and down, and I was hearing these things and after I got back.

Q But you started up back without knowing what had happened?

A Well, I was satisfied, for the simple reason, I am like this: I didn't want to stay there and not know what was going on up there. For all I know, I thought somebody might walk off with the barracks with me in it.

Q Have you finished your answer?

A I think I have, sir.

Q All right. So that so far as your testimony to this Court is concerned, you went downstairs, you were there a couple of seconds, and then you started back upstairs to your barracks, and on the way up you learned from some of the boys what had happened?

A I did.

Q Now, that is your testimony?

A I did.

Q All right. Did you see Willie Prevost that night?

A No, sir; I did not.

A You didn't see Willie Prevost?

A I did not.

Q The whole evening, you didn't see Willie Prevost?

A Not to know him.

Q Why, you know Willie Prevost, don't you?

A Sure, I know him, now.

Q Well, you knew him on the night of August 14, too, didn't you?

A Well, I knew of him. I could have seen him and not known him. But I don't think I seen Willie Prevost.

Q You don't think you say him?

A At least, I will be sure. I will say I haven't---I didn't see him.

Q You and Willie Prevost were not in that orderly room together that night, were you?

A How could I be in two places?

Q Well, that is the thing that you might explain to this Court. I am here merely asking the questions.

Defense: I don't think counsel's observation is fair.

Trial Judge Advocate: I am just here trying to determine the facts, and I am asking the questions.

Q The question was whether you and Willie Prevost were there together in that orderly room that night?

A What orderly room?

Q The orderly room in the Italian area?

A I haven't ever been in the Italian area until I went down with the court.

Q Then your answer was, you and Willie Prevost were not together in the orderly room that night?

A At no time.

Q Now, we are talking about August 14th, and you say your answer is, no, that you were not there?

A No, sir.

Q Now, how long had you known Willie Prevost before the night of August 14th?

A I didn't hardly know him at all, sir.

Q You didn't know him at all?

A I have met a lot of fellows that is just in the Company there, that I didn't know anything about.

Q I didn't ask you whether you knew anything about him, I just asked you how long you had known him before the night of August 14th?

A I had seen Willie Prevost occasionally, but so far as knowing the man, I don't even know him till yet.

Q Well, you knew him,---what you mean to say is that you are not a close friend of his?

A Well, I will take anybody for a friend, but I don't know anything about him. I know him when I see him, yes.

Q Well, you knew him when you saw him before August 14th, didn't you?

A Yes, sir; if I paid attention I could.

Q Now, when you were down there in front of 719, was the fight still going on in the Italian area?

A I couldn't tell anything about it. I hadn't been down there.

Q Did you hear any noise or commotion going on at that place?

A I didn't pay any attention. I went right back; I wasn't there long, to tell anything about it.

Q Well, you just didn't know whether it was over with or not at the time when you got out. What was it that satisfied you?

A Because I felt like I would be safe.

Q Oh, you call that satisfying your curiosity?

A Sure.

Q When you feel like you are safe?

A Sure.

Q And you felt safe when you went downstairs, then?

A I imagine if I had stayed in bed I would be better off, it was a lot of men stayed in bed.

Q But to satisfy yourself, you stayed in bed until you went downstairs to satisfy your curiosity?

A Yes, sir.

Q And you stayed down there a couple of seconds and went right back up and went to bed?

A That's right, sir.

Trial Judge Advocate: That is all.

REDIRECT EXAMINATION

Questions by Defense:

Q When were you first assigned to the 650th Port Company?

A I can't remember the date.

Q What was the month?

A I think it was the latter part of May.

Q Latter part of May?

A Yes, sir.

Q Now, up to and including the evening of August 14, 1944, had you ever known Thomas Battle?

A No, sir; I didn't.

Q When did you first become acquainted with Thomas Battle?

A I met him in the stockade.

Defense: That is all.

RECROSS EXAMINATION

Questions by Trial Judge Advocate:

Q That is not the first place you met Willie Prevost, is it?

A No, sir. I had met him before, I had met quite a few others that I can't recall. I didn't know them.

Q Who all can you recall having met before the night of August 14 of your Company?

A May I make this clear, sir?

Q Well, you can answer that question and then you can explain all you want to.

Defense: What was that question?

(Last question read back.)

Q Will you go ahead and answer the question?

Law Member: What was the question again, I didn't get that?

(Last question reread.)

Q Will you give us the names?

A Sergeant Aubry. Freddie Umblance, he came from the Company at Camp Jordan. I can't think of any more, sir.

Q All right. All you could think of was Sergeant Aubry, your First Sergeant, and Freddie Umblance?

A Yes, Now, may I explain?

Q Yes; you can go ahead and explain now.

A. Well, after I was put in this Company, I got a leave of, what do you call it? I was on a furlough. I got a furlough, and I hadn't been in the Company long before I got the furlough, I went home, I got some twenty days, and I stayed over a month because of illness.

Trial Judge Advocate: Well, of course now, he is voluntarily saying something Counsel that I would not have wanted to bring out against him, and I am perfectly willing to have it stricken.

Defense: Well, I don't see any trouble or anything wrong. Let him go ahead.

Law Member: The trouble is, there was an improper question asked on redirect examination, and this has opened it up.

Trial Judge Advocate: What was that, if it please the Court?

Law Member: When he asked how long had he known Thomas Battle.

Trial Judge Advocate: Of course, now, he asked for an opportunity to explain, and, obviously, I wanted to give him an opportunity to explain.

Law Member: Well, I think he has gone far enough to explain to us his absence from his company. Whether it was on leave, or whether he was some place else, doesn't make any difference.

Trial Judge Advocate: So far as I am concerned, I am willing that testimony given be stricken. Of course, it came out on his own request.

Law Member: I will strike the testimony if there is any mention of a Court Martial.

Defense: I think he has a right to tell us how long he was away.

Trial Judge Advocate: All right; if you want this in here, all right. I think it is improper, but if you want it in, I have no objection.

Defense: Well, I have no objection to having it taken out. But I do want it in the record as to how long he was away.

Law Member: It is voluntarily in here in either instance. From the time you got your pass, Green, until you got back to duty with your Company, how long was it?

The Witness: Four days was over,---

Law Member (interposing): Now, do you understand my question? How long was your pass?

The Witness: Furlough, it was twenty-eight days.

Law Member: When did you get back to duty?

The Witness: I got back to duty, I think it was the first of August, I think it was the first of August.

Law Member: Now, when did you originally join your Company?

The Witness: I joined it the latter part of May

Law Member: Now, I think that is sufficient.

Defense: That is satisfactory.

Q From August 1, to August 14, the only men that you remember knowing in your Company are Sergeant Aubry and Freddie Umblance?

A I should remember quite a bit of them, but I know I don't know them.

Q That is the only two. But you did mention Willie Prevost and you meant to include Willie Prevost?

A Because I have seen the man that don't make it that I know the man.

Q You knew him when you saw him, you knew who he was?

A Well, I couldn't,---

Defense (interposing): Now, if it please the Court, the witness and Counsel are putting different interpretations on the word "known".

Q Well, you knew Willie Prevost when you saw him prior to August 14th?

A When I would see him?

Q Yes. When you would look at him, when he would be coming down the street, you could tell that it was Willie Prevost, when you see him?

A I couldn't hardly do that.

Q The only ones you could do that with was Sergeant Aubry and Freddie Umblance?

A Well, I could hardly do that and ,---well, I knew them,---but I didn't know Willie Prevost that well.

Q Well, you were there with your Company between August 1st, and August 14th, the entire time?

A Yes, sir; I was.

Trial Judge Advocate: That's all.

Defense: I have no further questions.

President: Any questions by the Court?

Maj. MacLennan: I have one question.

Law Member: Now, remember, in questioning an accused you must confine your questions to those matters which would be permissible for the Trial Judge Advocate to ask on his cross examination.

EXAMINATION BY THE COURT

Questions by Maj MacLennan:

Q Do you know Willie Prevost, do you know where Willie Prevost had his bunk in 719?

A Yes, sir.

Law member: Now, that is objected to on the grounds that it is improper cross examination.

Trial Judge Advocate: I don't quite see why that is not a proper question. That is a question I could have asked him.

Law Member: I did not hear anything on direct examination pertaining to Willie Prevost being in any barracks.

Trial Judge Advocate: There did not have to be. He testified he was in the barracks and I might have asked him pertaining to anyone that was in the barracks. I choose not to, but that does not mean a member of the Court cannot do it. He testified he was in his barracks during that time, stayed up there and claimed he did not go anywhere.

Law Member: No, I am not going to allow that.

President: Any further questions? Witness will be excused.

Witness excused.

Accused, Private Richard H Barber steps forward.

Law Member: Private Barber, you are an accused in this case, and as an accused you have certain rights and privileges as a witness. You may be sworn, that is, you may take the oath and take the stand in your own behalf and if you do that, you are subject to cross examination by the Trial Judge Advocate and by members of the Court. Or, you may make an unsworn statement which strictly is not evidence but which will be given such consideration by the members of the Court as they deem appropriate. In such case, with an unsworn statement, you cannot be cross-examined, and your third privilege or alternative is that you may remain absolutely silent and no remarks may be made by the Trial Judge Advocate to the effect that you did elect to remain silent, nor can it be taken into consideration by any member of the Court in reaching the determination as to your guilt or innocence.

Do you understand those instructions, Barber?

The Accused; Yes, sir.

Law Member: Have you talked this over with your counsel as to what you desire to do in this case?

The Accused: Yes, sir.

Law Member: And do you wish to be sworn as a witness?

The Accused: Yes, sir.

Private Richard H Barber, 650th Port Company, a witness for the Defense, was sworn and testified as follows:

Trial Judge Advocate: State your name?

The Witness: Private Richard H Barber.

Trial Judge Advocate: And your organization?

The Witness: 650th Port Company

Trial Judge Advocate: Your station?

The Witness: Stationed overseas.

Trial Judge Advocate: Well, you are at present at Fort Lawton now, aren't you?

The Witness: Yes, sir; in the guardhouse at Fort

Lawton.

Trial Judge Advocate: And you are one of the accused in this case, are you not?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q Barber, I want you to look at the Court and speak clearly and distinctly so they can hear you, I want them to hear everything you have to say, and so do you. Now, speak up. How old are you?

A Twenty-two.

Q Are you married?

A Yes, sir.

Q That is your wife, the little lady sitting in the court room back there, isn't it?

A Yes, sir.

Q When were you inducted into the Military Service, Barber?

A February 1st, 1944.

Q February 1st, of this year?

A Yes, sir.

Q What had your occupation been in civilian life?

A Dining car waiter.

Q For what railroad?

A For the Pennsylvania Railroad.

Q Dining car waiter for the Pennsylvania Railroad?

A Yes, sir.

Q Now, Barber have you ever been in any trouble in civilian life before you came into the Army?

A Yes, sir.

Q What was that?

A I was in trouble for tampering with an automobile.

Q Now, when were you first assigned to Fort Lawton?

A February 14, 1944.

Q And were you at Fort Lawton on August 14 of this year?

A Yes, sir.

Q Have you been at Fort Lawton all of the time since that time, Barber, since August 14, 1944?

A I was stationed here since August 14. You mean up until now?

Q Up until now.
A Oh, no, sir; I have been overseas.

Q You have been overseas?
A Yes, sir.

Q Now, I don't want you to mention the name of the particular place you were at, but when did you come back from that place overseas to Fort Lawton, about when?
A I came back,---I came back into the station I know, October 14th, I believe. I stayed up in California for about a week. I don't know the exact date.

Q Now, calling your attention, Barber, to the night of August 14th, when there was difficulty between the colored soldiers and the Italians, where had you been in the earlier part of that evening?
A I was down to the PX, and by the Service Club, and then just before I went in my barracks I was over in the mess hall, by the 578th mess hall.

Q That is Building 700, isn't it?
A Yes, sir.

Q Now, after you left the 578th mess hall, Building 700, what did you do?
A I went over and went up in my barracks.

Q What did you do after you got in your barracks?
A I started to packing my clothes first, then I thought I didn't write to my wife that day, and so I got out my writing material and I went to a table and I started writing a letter to my wife.

Q You started writing a letter to your wife?
A Yes.

Q Did you finish that letter?
A Yes, sir. I finished it. After this commotion was over.

Q Well, what did you do, did you finish it at the time you started it?
A Right then?

Q Yes.
A No, sir; I didn't.

Q Why didn't you?
A Because I was interrupted by Sergeant Gresham. He came in.

Q Interrupted by whom?
A Sergeant Gresham.

Q And how did he interrupt you.

Q He came up and asked me how come I didn't fall out to that whistle that was blown. And I told him I didn't hear any whistle, and he told me, he said, he said that the fellow had went down there, and scared those Italians, and some of those Italians were messed up.

Q Well, now, give us the substance of what he said?
A The Italians were messed up, and, what he understood was, there had been a whistle blown, and some of the fellows had went down there and some of the fellows were beaten, and the Italians had gotten the best of them and he come back to see how it was all the fellows wasn't out. He said he understood all the fellows wasn't out and so he came up and that is how come I didn't finish writing the letter.

Q Did you fall out by yourself, then?
A Well, I tried to finish the letter. I was almost finished. But I was going to finish the letter, and then I was going on out and I heard the whistle blow then and so I jumped up and went on out, because I had did that before, when we went out once before to quiet those Italians down. That is what the Lieutenant said, he said, when you hear that whistle, come on out, whatever you're doing.

Q What do you mean when you say you went out to quiet the Italians down once before?

Trial Judge Advocate: Now, I don't think that is proper testimony. The Court has repeatedly excluded that testimony.

Defense: Not repeatedly, just yesterday.

Trial Judge Advocate: Twice yesterday and once before.

Defense: Well, I think this is quite material now, explaining why these men went out there, and what prompted them, and what had happened before to prompt them to do this.

Law Member: Oh, no, there cannot be any justification for a riot, you should realize that, Counsel. That was on that ground that I have previously excluded that testimony. But this witness seems to be inferring that he thought he was ordered out. If that is the purpose of it, I believe that is different.

Defense: That is the purpose of it. They knew of what had happened on a previous occasion.

Law Member: No, no, now.

Trial Judge Advocate: No.

Defense: This is the position of the defense. We can show what happened on a previous occasion to show what was in the minds of these colored boys and what was expected of them on this occasion, up to a certain point, and I believe that would be true.

Trial Judge Advocate: I have no objection to his testifying if he wants to, to testify to the fact that he thought he was being ordered out.

Law Member: That is as far as it will go.

Defense: I think the record should be clear and it should be shown that these men were sent down and told to go down there once before and quiet another disturbance, and, were told how to fall out, and in what manner to act.

Law Member: Now, you don't want the Court to believe that every time a whistle blew they were to go down in the Italian area, do you?

Defense: No, but there isn't anything to indicate every time a whistle blew there were Italians injured either. But there was a time before when this Company was called out and told exactly how to arm itself and what to wear, such as helmets and so forth, and what to use for arms and, information as to their headgear, and so forth.

Trial Judge Advocate: Now, you are not accounting for that occurring on this night?

Defense: No, but to show why a lot of them went out of their barracks and acted in the manner they did.

Law Member: Well, I will hear the testimony that he thought he was being ordered out when he heard this whistle blown. As far as any previous incident between Italian prisoners of war and negro soldiers, or between Italians and American soldiers, I am not going to admit that.

Defense: But knowing that history will affect the credibility of the story he is going to give about it,--- it will affect a lot of witnesses. There is a time in this particular chain of events that they would not have a right to rely on it any more under any previous occurrences, but there could be a period of time, from the time they left the barracks up to a certain point, from what they had been told before, that they would think this was a similar occurrence to that which they had been ordered out on once before.

Law Member: He may testify as to the previous occurrence, but not in detail.

Q All right. Barber, will you tell the Court about

the previous occurrence?

Law Member: No, now, I am not going to let you go that far. There was a previous occurrence, was there, Barber?

The Witness: Yes, sir.

Law Member: And you went down there at that time?

The Witness: Yes, sir.

Law Member: All right.

Defense: He went down there,---

Q Well, this didn't concern that Italian area, did it?

A I beg your pardon. We did not go down to that same place.

Law Member: Well, I am not going to allow it. Colonel, and Major, will you step up here, please.

(Whispered conference.)

Law Member: My previous ruling as to the exclusion of any previous incident between Italian Prisoners of War and any other units at the garrison at Fort Lawton stands.

Defense: All right.

Q Well, I think, Barber, we were at a point when you related some conversation with Sergeant Gresham?

A Yes, sir.

Q Will you go on from that point and tell the Court what you did thereafter?

A Well, when he first came in, he wasn't talking directly to me, he was speaking to everybody, I guess. That is what he meant, everyone in there.

Q When you say "he" you mean Sergeant Gresham?

A Sergeant Gresham, he was speaking to the fellows that was in there, in general. I was sitting down writing this letter and I knew there was a commotion going on out in front, before he came back, but due to the fact I wanted the letter to get out next morning, as soon as is possible, I was trying to finish this letter before I went out into the gang. Well, when he made his first remark, I didn't even look up, I was concentrating and I kept on with this letter, and then he walked back and talked to me directly, and he said, "I know you aren't scared, Barber, because you are from Chicago, I know you aren't scared." And he said, "Hurry up," just like that, and I said, "O.K." and he went on out. And so, I saw him with the whistle in his hand, and I

took it for granted he blew the whistle, but I didn't see him blow it. So I sat up there and I was going to finish this letter, but when I heard this whistle blown, I got up and went out, and when I got out there, there was a big crowd in front of the barracks, and more was coming from all directions.

Q At the time that you went out, did you see anybody that was injured?

A Yes, sir.

Q Who did you see?

A Snow.

Q And where did you see Snow?

A I went outside first and I saw a lot of the boys going into the latrine, and I looked in there and I saw Snow.

Q Let me ask you this. Do you know what lights there were that night in front of Barracks 719?

A I don't know anything about street lights, but I know,-----

Q (interposing) Well, I am talking about the lights on the barracks, adjacent to the barracks.

A Yes, sir. There was around at the front, there was, the only light at the latrine, that is the only light I saw.

Q Were there any lights burning on the outside of 719?

A No, sir.

Q Are you positive?

A Yes, sir; I am sure of that.

Q The only light that was shining out was through the latrine?

A Yes.

Q There are some light fixtures on Building 719, are there not?

A I don't know exactly, I don't exactly remember about that. But right inside I am pretty sure there is a globe, like that up there (indicating), a globe inside.

Q All right. You were telling the Court you went down in front and saw a crowd. Now, tell the Court from that point on what you did.

A I went across the street. I went outside and I saw everybody was going down towards the Italian area so I just joined the crowd, too, and I went across the street by the mess hall, that is the way they were going when I got out there, so I went that way, too.

Q That would be Building 700?

A Yes. And I joined the crowd and there I saw everybody had a stick or was getting one, so I got one, too.

- Q Then, what did you do?
- A Before this, we went to the back of the mess hall, and we saw this group coming out,
- Q Now, will you come over here and show the Court where you went. I think that would be best. You understand this map, this is Barracks #719, and here is the mess hall, No 700, the building across the street, you spoke of, and this area bounded by Lawton Road and Virginia Avenue, is known as the Italian area.
- A Yes.
- Q And this road here running past Building 700 down to the Italian area, is Lawton Road. (Indicating to map) Now, where is it,---I want you to show the Court, and indicate on there just where you went and just how far you went.
- A I went to the back here, and there is an embankment back there (indicating).
- Q You are speaking of the end of Building 700, close to Building 700?
- A Yes. I went to the back of that embankment, before I could go down to the bottom of it. After we got back there, it was dark back there and I can't see so good at night, and so I noticed,---I knowed that embankment was there, and so I stopped to try and kind of pick out a way to get down that would be better for me, and before I could go down, this crowd came up and said it's all over with, let's go back, and this John Pinkney was there, and I don't know whether it was one or two M.P.'s, but I know I saw a white M.P. I saw so many of them there that night.
- Q I want you to tell the Court now whether or not you ever crossed Wyoming Avenue there into the Italian area?
- A No, sir. I don't know anything about the Italian area.
- Q I want you to tell the Court also, Barber, whether at any time that evening you were ever in the orderly room, known as Orderly Room No 713, shown on this map, or in the immediate vicinity of it?
- A No, sir.
- Q Now, how many different investigating officers have talked to you in connection with this case?
- A How many different ones?
- Q Yes, oh, approximately.
- A About five.
- Q Have you talked to Col Jaworski?
- A I was counting him in.
- Q You were counting him in. Have you talked to Col Williams?

- A No, sir: I never seen him till he come here before.
- Q No, at the request of anybody, did you make a written statement in your own handwriting with respect to this matter?
- A Yes, sir.
- Q How many different ones?
- A I made two in my own handwriting.
- Q And did you make any others, otherwise?
- A Well,---
- Q Just tell the Court.
- A The lasttime I went down to the Port, to the Goodrich Building, I think it is, I heard it referred to. I think it is the Goodrich Building. I was asked by Col Jaworski, or Col Manchester, or both of them was present, I don't know which one.
- Q You mean Major Manchester. I don't think he is a Colonel yet.
- A Major Manchester. He asked me to write a statement out. I talked to him and told him what I had to say and he said there wouldn't any hamr in writing a statement out if I was telling the truth, and I said, that's right, and he said then, to go in and write it out. Well, I went in and wrote it out and I wrote it and gave it to Sergeant Young. He was in the room and he took it out and gave it to Col Jaworski, and Major Manchester, and they came back in and said, that wasn't what they wanted, I could do better than that. And he said, you write another one and so I wrote another one and gave it to Sergeant Young and he said I better come with him and I went up with him, and they read it out, and he said, that still isn't what we want. And I said, well, what I said is it. I said, here is the truth, I don't know anything better, any better way to express it. And he said he would have somebody write it up, and would I sign it, and I said if it would be the truth I would sign it. And so they had somebody write it up, and I don't know who it was, but after they brought it back I signed it and I said it was the truth.

Defense: That's all.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

- Q Now, you said it was the truth and you handed it over to us?
- A Yes, sir.
- Q And you wanted to qulify that and say it is, as far

as you went,-----

A (interposing) You wanted me to sign that statement and that is the truth, as far as that statement went, that is the truth.

Q And that is all you told us at that time?

A I don't think it was all in full that I told you.

Q Well, you didn't tell us anything about this story you are telling the Court now that Sergeant Gresham is supposed to have come in and told you to get on out there and you saw him with a whistle in his hand, you didn't tell us that, did you?

A No, sir.

Q Why didn't you?

A Well, I want to tell you, the first time I was called in on this investigation, was before my Company went overseas. We was all down in this M.P. court room, on the other side of town, and one time I was waked by the CQ and they said they wanted to see me up at the Port, and then I went into the orderly room and,---

Q (interposing) I just asked you,---

Defense (interposing): Well, let him finish his answer, Counsel, he is answering.

Q I am asking him why he didn't tell Maj Manchester and me that, I didn't ask for all that.

A I am going to get to that.

Q You mean you are going to, but you are just talking about something entirely different now?

A Yes, sir. Now, then, I went down and I saw them.

Q When did this happen?

A That was before I went overseas.

Q That was two months before we talked with you, wasn't it?

A I am going to tell you why I didn't tell him it all, and it adds up to this, to my reason for it.

Q Oh, all right, go ahead.

Law Member: I think possibly Sergeant Young better leave the court room.

Trial Judge Advocate: Yes, I guess so.

A (continuing) Well, I went down and I saw Maj Manchester, and there was some more gentlemen in the room, I don't remember them because I haven't seen them since. And when I sat down he said that he had heard,---well, first, he explained to me my rights, and everything, that I didn't have to say anything, but he said they wasn't charging me with anything, and

somebody had named me as being down there in that Italian area, and he wanted to hear what I had to say about it, and I told him I had or, I would give him a statement about it, if I didn't have to incriminate anyone. And he said he didn't want me to incriminate anyone. He was interested in me. And I told about me. And so he let me go back to my Company and go overseas. When I finished telling him, he says he was satisfied, and he would let me go back overseas. But when I come back from overseas, the first time I went down there to see Maj. Manchester, you and that gentleman, that Captain, was present, and he told me to tell you the same things I had told him before I went overseas. And I didn't mention Sergeant Gresham, because of that fact, and that is the truth, that is the reason, he told me he didn't want me to do that, to incriminate anyone in the beginning.

Q Well, we talked with you awhile, and you denied for quite a while, you even left your barracks?

A No, sir.

Q You did not deny that?

A No, sir.

Q Well, we brought Sergeant Gresham in, and we had Sergeant Gresham tell you right to your face he saw you down in the orderly room, didn't we?

A Yes, sir.

Q And that is what gave you the idea to come into court and testify that Sergeant Gresham was the one that came in and told you to go out there?

A No, sir; no, sir.

Q Even after we brought Sergeant Gresham in, and placed him before you, and had him identify you to your face as having seen you in that orderly room, you still did not tell us anything about Sergeant Gresham telling you to do that in the barracks, did you?

A No, sir.

Q And the first time now you have told anybody anything in this case about Sergeant Gresham being in this case as you mentioned was today?

A No, sir.

Q Who did? Who did you tell?

A Major Beeks.

Q Oh, no, I don't mean him. I am talking about anybody except your lawyer. You have not told anybody connected with the investigation in this case about Sergeant Gresham being connected with this case before today?

President: Are you going to use the stenographers

any further? If you are, possibly they should not be in here.

Trial Judge Advocate: I don't think so.

President: I would rather have them outside, if there is any possibility of it coming out, rather than letting them sit here and have it come out while they are here.

Trial Judge Advocate: All right. They will be asked to leave.

President: In the event any witness is testifying here who is connected with the statement that was taken of this man, and if there is any possibility of their called to testify, I would like to have you leave the room.

Mrs Henderson: We didn't work on his statements.

President: Oh, all right.

Q You know Roy Daymond, don't you?

A Yes, sir.

Q Did you ever have any trouble with Roy Daymond?

A No, sir.

Q Do you know Willie Ellis?

A Yes, sir.

Q Did you ever have any trouble with Ellis?

A No, Sir.

Q Do you know Jessie Sims?

A Yes, sir.

Q Did you ever have any trouble with him?

A I have had a couple of arguments with him.

Q Any serious trouble?

A No, sir.

Q Just arguments like you have had with a number of other fellows?

A Yes, sir.

Q All right. Now, you heard Jessie Sims say that he saw you in the orderly room?

A Yes, sir, I did.

Q And you heard Willie Ellis say that he saw you in a jeep and then saw you going in Door A of the orderly room?

A No, sir; I didn't heard him say that.

Q What did you hear Willie Ellis say about you down there in that Italian area?

A I think I heard him say he saw me go in the orderly room.

Q But you did not hear him say he saw you in a jeep?

A No, sir.

Q What did you hear Roy Daymond say?

Defense: I don't think that is proper cross examination, if the Court please.

Law Member: Objection overruled.

Q He said he saw you standing next to the orderly room, didn't he?

A Yes, sir; I think so.

Q And Roy Daymond has known you for quite some little time, hasn't he?

A I don't think he has known me for quite some time.

Q Well, a number of months, though, hasn't it been?

A I never knew him until I moved in Barracks 719.

Q When did you move in Barracks 719?

A About two weeks before this.

Q And you and Roy Daymond were on the or in the same barracks?

A I was on the second floor and he was on the first.

Q And Willie Ellis was in the barracks you just got through talking about him?

A I know him; but I don't know if he was in the barracks or not.

Q How long had you known Ellis?

A The first time I came in contact with him was when he was transferred from the Third Platoon to the Second Platoon.

Q How long was that before this night of the riot in the Italian area?

A It was just after I came back off my furlough in July.

Q How long had you known Jessie Sims?

A I don't know exactly when I knew him. I used to see him gambling all the time. That is why I happened to know him. I never had any dealings with him. I just saw him gambling.

Q Did you gamble with him?

A No, sir.

Q You don't gamble, do you; you don't shoot dice, do you?

A I shoot dice.

Q Now, you told your counsel that you were convicted of a crime and you said it was tampering with an automobile?

A Yes, sir.

Q As a matter of fact, you were convicted of the theft of an automobile, weren't you?

A No, sir.

Q What sentence was given you?

Defense: I don't think that is proper.

Law Member: Well, now, you brought it out, Major, but I am going to sustain the objection, anyway.

Trial Judge Advocate: Even though he brought it out?

Law Member: Yes.

Q Never mind, then, don't answer it. Now, you told the Court that after Gresham gave you this pep talk, what was it he said, "You were from Chicago, and for that reason he knew you were not scared"? Is that it?

A Yes, sir; that is just what he said. "I know you aren't scared, because you are from Chicago."

Q Well, what did he mean by that?

Defense: Well, how can he testify what he meant? I object to that.

Law Member: Objection overruled.

A I can't tell you what he meant, I can tell you what I think he meant.

Q All right, go ahead.

A At the conclusion, I could. Well, this first whistle had been blown, and he thought perhaps I had heard it, and was scared to come out, because I knew what was going on, but I didn't hear it.

Q You didn't hear the first whistle?

A No, The first whistle, I couldn't say for sure, but after he went out I heard one.

Q You just heard one after that time?

A Yes, sir.

Q You told the Court you picked up a little stick?

A Yes, sir.

Q And you started on down that Lawton Road?

A Yes, sir.

Q As a matter of fact, what you did is, you picked up a club, like this one, and it was a part of that fence that was in front of the 578th mess hall, wasn't it?

A No, sir.

Q Are you sure of that?

A I know what I took.

Q All right; what did it look like? See if you can find one that looks like what you took?

A (indicating) This one.

Q That is what you had?

A Yes, sir.

Q How much does that weigh?

A I don't know, sir.

Q Well, just feel it once.

Defense: You might ask him if he had that specific thing or one that looked like it.

Trial Judge Advocate: Well, he says he took that one.

A Yes. I know it was one of these because over there, there was a lot of them all over like this.

Defense: Was it metal, like that?

The Witness: Yes, sir.

Defense: All right.

Q How much would you say that weighs?

A I would say a bout a pound or two pounds.

Q Well, it comes closer to weighing five or six pounds.

A I don't know anything about weight. I have never estimated any weight.

Q All right.

Trial Judge Advocate: I want to offer this in evidence as being a club of the type the accused Barber said he took to the Italian area with him, or rather, that he took with him when he started for the Italian area.

Law Member: Is there any objection?

Defense: No objection.

Law Member: Instrument will be received in evidence as Prosecution Exhibit 41.

The instrument above referred to was marked Prosecution Exhibit 41 and received in evidence.

- Q And this is what you were referring to when you told the Court that you picked up a little stick?
- A Yes, sir.
- Q This is made of metal, isn't it?
- A Yes, sir. But I'll explain why I picked that up. I thought that that was the uniform weapon. I thought,--- everybody I seen practically had something like that in the crowd. I had saw three or four laying on the ground and I got one, too.
- Q You thought that was part of the customary equipment for the evening?
- A Yes, sir.
- Q Did you see any of them with clubs of this kind, too, Barber? I will bring it to you. Did you see any of them with standard equipment of this kind, Prosecution Exhibit 9 (indicating)?
- A No, sir.
- Q Did you ever seen that fence in front of the 578th mess hall?
- A Yes, sir: I have.
- Q Well, it was made up pieces of boards of this kind, wasn't it?
- A Yes, sir; I guess it was.
- Q But you did not see anybody with equipment of this kind?
- A No, sir; in fact, I don't,---I think that fence wasn't there when I came out.
- Q Did you see anyone with equipment of this kind, Prosecution Exhibit 8 (indicating to witness)?
- A No, sir. I didn't see anybody. Everybody I noticed had something like that (indicating).
- Q You don't recall seeing anything of this nature?
- A No, sir; I don't.
- Q And this fence material that you say that fence was made up of, do you remember whether the fence was there or not at the time you came out?
- A I am sure it wasn't there, because I would have bumped into it, or either climbed over it, but I didn't do that. I don't remember doing that.
- Q All right, now. This is a statement that I believe you said,---is this the statement you were talking about that you gave that you said is the truth?
- A No, sir.
- Q That is not the one?
- A No, sir.
- Q Well, is that your signature, is that your signature

(indicating to document)?

A Yes, sir.

Q Well, isn't it in your handwriting here, the words "This is the truth,"?---

A Yes, sir.

Q That is your own handwriting?

A Yes, sir.

Q Did you say now that the statement is not the truth, or that is not the statement you gave us?

A It didn't,---it don't seem like ti read like that, sir.

Q It doesn't?

A No, sir; because I didn't read this where I had said a fence was in front of 578th mess hall, and started down along Lawton Road.

Q That is just a little bit different from the testimony you gave today, isn't it?

A Yes, sir.

Q Yes, it surely is.

A But I honestly remember that in there because I didn't say I remembered where I picked that club up.

Q But this was your signature?

A It looks like it.

Q You say these words written in pencil, "This is the truth,"---do you see that?

A Yes, sir.

Law Member: Is that in your own handwriting, too?

The Witness: It looks like it, sir, yes, sir.

Q But you say it is not your statement?

A No, sir; that might have been what was wrote on there, but that wasn't what I meant when I signed it I might have drawn a wrong conclusion of what it meant. I know what it means now, but at that time, I didn't.

Q As a matter of fact, there are just two sentences in that statement and you read it over very carefully two or three times, didn't you, Barber, before you signed it?

A No, sir. He just came in and I read it over quick and then signed it.

Q Well, now, let us just think back a little bit. Don't you remember that the other statement had one more sentence to it, and you read it over very carefully

and you said you wanted the last sentence taken out of it?

A That is where it was changed, after it was changed, because in the first statement it was practically like the ones that I wrote. But only, it didn't say anything about a picking up a stick any place, or how far I went. It only said I proceeded toward the Italian area and on my way I picked up this little stick where a fence had been in front of 578th mess hall, and then started down Lawton Road and I got beyond Building 700 where I was stopped by Pickney, an M.P. who told me to go back, and I wasn't allowed to go any further. Now, I told you I didn't want that statement in there, and to take it off, and when he took it back to write it and came back again, why I just looked, it seemed to end the same, and I didn't read it, and so that was,---that is how it happened, I saw that one part was taken off and that is all I thought of. I didn't read it over, the way it is said here, so I didn't know what was there. I didn't think you was going to do that to me.

Q Oh, you didn't think I was going to do that to you?

A No, sir.

Q Well, now, will you look at those two sentences and see if those are not exactly the same sentences that were in the other statement?

A No, sir. I believe,---I don't believe it was, because if it was, I didn't understand it to say that, because I never told you where I picked up a stick in my oral statements, because I couldn't say where I picked the stick up.

Q Of course, you have told the Court a different story now, from what appears in your oral statements and your written statement, haven't you?

A Yes, sir; I have.

Trial Judge Advocate: I believe that is all, if it please the Court.

Defense: May I see that?

Trial Judge Advocate: Oh, yes (handing document to Defense).

President: Do you want to finish with this witness or take a recess now?

Defense: Oh, we might as well take a recess. I don't know if I will have anything further.

President: Court will take a 15-minute recess.

At this point a 15-minute recess was taken after which proceedings were resumed as follows:

Defense: Does the Court have any questions to ask of the last witness?

President: You have nothing further?

Defense: No.

President: Does the Prosecution have any further questions?

Trial Judge Advocate: No.

President: Does the Court have any further questions? If not, witness is excused.

Witness excused.

Trial Judge Advocate: The Court has opened, I assume?

President: Yes, Court will come to order.

Trial Judge Advocate: Let the record show that each of the accused are present, that all members of the Court are present, that the personnel of the accused as well as the personnel of the Prosecution are also present.

President: And let the record show that the Defense has no redirect examination and the Court has no further questions.

Private Willie C Basden, steps forward.

Law Member: Now, Basden, will you stand up here near the stenographer, please. You have certain rights before a Military Court Martial, Basden. First, you may be sworn as a witness, that is, you may take the oath and then take the witness stand and testify in your own behalf. If you do that you are subject to cross-examination by the Trial Judge Advocate and by the members of the Court. You then are treated as any other witness.

Or, you may make an unsworn statement, either by yourself, or through your counsel. In such event you are not subject to cross-examination by anyone.

Thirdly, you may remain absolutely silent, that is, you may either make or refuse to make a statement, sworn or an unsworn statement, and if you do remain silent that fact cannot be taken into consideration by the members of the Court in determining your guilt or innocence. Now, do you understand that, Basden?

The Accused: Yes, sir.

Law Member: And have you talked to your counsel rela-

tive to what election you want to make?

The Accused: Yes, sir.

Law Member: And do you wish to sworn as a witness and testify in your own behalf?

The Accused: Yes, sir.

Private Willie C. Basden, 650th Port Company, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: Now, do you think you can talk loud enough to make everyone hear. You can pull your chair back a little bit. You will have to speak out loud now. State your name?

The Witness: Willie C Basden.

Trial Judge Advocate: Willie C Basden?

The Witness: Yes, sir.

Trial Judge Advocate: Is that the way your pronounce that, Basden?

The Witness: Basden.

Trial Judge Advocate: That is spelled B-a-s-d-e-n?

The Witness: Yes, sir.

Trial Judge Advocate: What is your grade?

The Witness: Private.

Trial Judge Advocate: And your organization?

The Witness: 650th Port Company.

Trial Judge Advocate: You are now out here at Fort Lawton?

The Witness: Yes, sir.

Trial Judge Advocate: Are you one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q Basden, can you talk louder than you are talking now?

A I think so.

Q So that all the members of the court can hear you.
How old are you?
A Thirty-four, sir.

Q Are you married?
A No, sir.

Q When were you inducted into the Military Service?
A 4th of September, 1942.

Q When did you come to Fort Lawton?
A I think it was the 28th of May.

Q Now, calling your attention to the night of August 14th, of this year, when there was trouble between the colored soldiers and the Italians, I will ask you where you were when you first learned of that trouble?
A It was the next morning, sir.

Q Where were you on the night of August 14th?
A I was in bed, sir.

Q In your bed?
A Yes, sir.

Q What barracks did you occupy?
A The one across the street, I don't know the number.

Q Is that a two-story barracks?
A No, sir.

Q You were not in a two-story barracks?
A No, sir.

Q Would that be number 668?
A Yes, sir.

Q That was one of the black barracks that was covered with tar-paper?
A Yes, sir.

Q At what time did you go to bed that night?
A It was after chow, sir.

Q You mean that is the evening meal?
A Yes, sir.

Q Well, do you recall about when it was?
A No, sir. I didn't pay no attention to the time.

Q Well, tell the Court whether or not on the night of August 14, 1944, you at any time ever went down into the Italian area?
A No, sir; I never been there.

Q Well, at any time during the night of August 14th, Basden, did you know that there was trouble going on down

there in the Italian area?

A No, sir.

Q You didn't know. Well, now, tell the Court whether or not at any time after you went to bed and went asleep you ever awakened or got up?

A Yes, sir. I was awoken by some noise, but I didn't exactly know what it was.

Q But when you heard this noise, Basden, tell the Court whether or not you got up at all?

A No, sir; I didn't.

Defense: I think you may examine.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q You say you did hear some noise that night?

A Yes, sir.

Q Where did the noise come from?

A Could have been from the mess hall across the street, or some place else.

Q What kind of noise did you hear?

A Well, I thought it was by the mess hall.

Q Well, what did this noise sound like?

A It sounded like they had a party over there.

Q It sounded like a party?

A Yes, sir.

Q That is the only noise you heard that night?

A Yes, sir.

Q You didn't hear any other noise?

A No, sir.

Q You didn't hear any shouting or didn't hear anything any throwing of rocks against the barracks, you didn't hear anything like that?

A No, sir.

Q Didn't hear any breaking of glass?

A No, sir.

Q And you didn't hear any whistles blow?

A No, sir.

Q Are you a sound sleeper?

A Well, sir, I don't know.

Q You don't know. You know Corporal Haskell, don't you?

A Yes, sir.

Q He picked you out of a lineup a few days after this riot occurred down at Fort Lawton as having been in the orderly room, didn't he?

A Yes, sir.

Q And then you heard his testimony here in Court?

A Yes, sir.

Q He said you were swinging a club, in that orderly room, didn't he?

A Yes, he did, sir.

Q Now, what Company are you a member of?

A I was with the 650th.

Q 650th Port Company?

A Yes, sir.

Q Do you know anybody in the 650th Port Company that resembles you?

A I don't know, sir.

Q Well, now, think real hard and think if you can think of anybody in the 650th Port Company that looks anything like you?

A I don't know, sir.

Q You can't think of anyone? Well, I want you to think real hard now and see if you can tell this Court whether there is anybody in the 651st Port Company that looks anything like you?

A I couldn't tell you that either.

Q Can you tell me whether there is anybody that looks like you in the 578th Company, that looks anything like you?

A I couldn't do that either.

Defense: I don't think that is a fair question, if the court, please. There has not been any showing that he knew anybody in the 651st or 578th.

Law Member: Objection overruled.

Q Were you stopped by anyone on the night of August 14th, while you had a club in your hand?

A No, sir.

Q Did anyone pull a knife on you on the night of August 14th?

A No, sir.

Q You are sure of that?

A Quite sure, sir.

Q Now, what time did you go to bed that night?

A I went to bed after chow, sir.

Q Yes, you told us you went to bed after chow, which is something about six o'clock in the evening, and which is any time until the next morning. Now, how long after "chow" did you go to bed?

A I couldn't exactly tell you, sir.

Q I know you couldn't tell me exactly, I don't expect you to. But, can you give me some idea of about what time it was?

A I am not good on guessing.

Q You're not good on guessing time?

A No, sir.

Q Well, was it about seven o'clock?

A No, sir.

Q Was it eight o'clock?

A I couldn't tell you exactly what time it was.

Q I know that, but did you get in bed by nine o'clock would you say?

A Could have been.

Q It could have been that you were in bed by ten o'clock?

A I couldn't exactly tell you what time it was.

Q Well, could you have been in bed by eleven o'clock?

A I have to be in bed by that time.

Q I didn't get that.

A I have to be in bed by that time.

Q Why do you?

A Because I went to bed.

Q Because of what?

A Because, I went to bed.

Q Well, because you say you were in bed when this riot was on, that is why you have to be in bed by eleven o'clock, is that it?

A That is what my statement said.

Q That was what your statement said, I know, but now I am asking you to tell this Court under oath whether you were in bed by eleven o'clock.

A Yes, sir; I was in bed by eleven o'clock.

Q All right. You were definitely in bed by eleven o'clock?

A Yes, sir.

Q Were you definitely in bed by ten o'clock?

A Have to be in bed.

Q You have to be in bed?

A If I went to bed after chow I would have to be in bed.

Q Well, now, you said you had to be in bed by ten o'clock, because you were in bed after chow?

A Yes, sir.

Q Well, you could be in bed at seven o'clock and still be in bed after chow, couldn't you?

A I don't exactly know what time it was, sir.

Q Was it dark by the time you went to bed?

A I don't know, sir.

Q Was it dark when you got up?

A I didn't get up.

Q You got up some time, didn't you?

A I got up the next morning.

Q Well, was it dark when you got up the next morning?

A No, sir.

Q It wasn't?

A No, sir.

Q It was daylight, wasn't it?

A Yes, sir.

Q Did you wake up from the time you went to bed till you woke up the next morning?

A I don't know, sir.

Q Well, what do you know about this matter except that you were in bed?

A I don't know anything about it, sir.

Trial Judge Advocate: Well, I guess that's all.

Defense: I have no further questions.

President: Any questions? If not, witness excused.

Witness excused.

Corporal Luther Larkin, steps forward.

Law Member: Corporal, you are an accused in this case, and as an accused you have certain rights. You may take the stand and take the oath and be sworn as any other witness. If you do that you are subject to cross examination by the Trial Judge Advocate and by members of the Court.

You may also elect to submit an unsworn statement, given either by yourself or by your counsel. In such an

event, that is, if you submit an unsworn statement you are not subject to cross examination by anyone.

Or, thirdly, you have the alternative of remaining absolutely silent and submitting neither an unsworn or a sworn statement. Now, if you do remain silent the fact that you do cannot be held against you. Now, do you understand the instructions, Corporal?

The Accused: Quite well, sir.

Law Member: And have you talked this over with Major Beeks?

The Accused: Yes, sir; I have, sir.

Law Member: And after talking it over with your counsel you desire to be sworn as a witness?

The Accused: I do, sir.

Law Member: All right.

Corporal Luther Larkin, Headquarters, Headquarters Detachment, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name?

The Witness: Luther Larkin.

Trial Judge Advocate: Your grade?

The Witness: Corporal.

Trial Judge Advocate: Your organization?

The Witness: Present organization, sir?

Trial Judge Advocate: Yes.

The Witness: Headquarters, Headquarters Detachment, Camp Jordan, Seattle 4, Washington.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you, Larkin?

A Twenty-three, sir.

Q Where is your home?

A Helena, Arkansas.

Q What has been your education?
A I have had three years of high school. I studied meteorology. I had a course of Manual Training since I came in the Army. I have had a course in typing and filing; clerk.

Q When were you first inducted into the Army?
A In October, 1942, sir.

Q In October, 1942?
A Yes, sir.

Q What has been your military service since that time?
A I have been corps man in a medical unit.

Q You are a corporal, did you say?
A A corps man, sir.

Q Was that your first assignment after you went out of the reception center?
A Yes, sir.

Q Will you tell the Court about it, tell the Court what your Military experience has been?
A Well, I came to the Army, I came to Seattle early in November,---

Q What year?
A 1942.

Q All right.
A (continuing) ---and I worked at a dispensary under Captain Leon Bachelor.

Q Is that here in Seattle?
A No; Camp George Jordan. My unit was the medical unit, 275. I was assigned to the medical section. My duties,---well, we just kind of switched around, you know, one fellow would do something in order to get all the more familiar with it, and we would do different jobs so we would get familiar with all the jobs to be done at the dispensary. We worked with a pharmacist; surgery; we worked as a clerk; we drove ambulances. We would do each job for two or three months, and then we would change to another job.

Q How long were you in that medical unit?
A For about eighteen months, sir.

Q And then were you transferred?
A Yes, sir. My unit, Headquarters 275th, which consisted of twenty-six men, I think, were supposed to go to overseas. Well, the enlisted men did not have to go unless they desired to go. But if they desired,---we had a sheet of paper where we could sign and we could go overseas with the unit. We all

volunteered for overseas duty. We came to Fort Lawton and we were scheduled for ten weeks of training, military training, medical and field training. After completing the military training an order came from the War Department that the medical men in the unit were no longer needed. So we had to be transferred to various Port Companies here on the Fort.

Q You were transferred to the 650th port Company at that time?

A Yes, sir.

Q Have you received the Good Conduct Medal?

A Yes, sir; I have.

Q When did you receive that?

A I received it about December, 1943, sir.

Q December, 1943?

A Yes, sir, from Lt. Shelton.

Q At Fort Lawton?

A No, sir; Camp Jordan.

Q Now, since August 14th, have you had any overseas service?

A Yes, sir; I have.

Q You were brought back from overseas for this trial?

A Yes, sir.

Q Now, calling your attention to the night of August 14, Luther, which is the night of the difficulty between the colored soldiers and the Italians, I will ask you to tell the Court what you did on that evening up to the time that you knew that there was any difficulty going on. Now, don't go into great detail, but tell the Court just what you did.

A Oh, I went around the PX, and Service Club; about the last place I visited, before the trouble was the mess hall of the 578th.

Q Is that building 700?

A Yes, sir; I think it is 700, sir. Yes, sir, 700.

Q And where did you go from there?

A From the 578th, I came up the street until I just, oh, just before I got in front of 719. I turned across the street in front of 719.

Q Now, speak louder, Luther.

A I came across the street in front of 719, and sat down on a garbage can, which sat almost in front of 719. I sat there, with my head hanging down, on my knee, singing like that (indicating).

Q You were singing?

A Yes, sir.

Q Well, then, tell the Court what happened after that?

A Well, I just turned off from some other fellows which came out of the mess hall, and I heard one of them screaming that an Italian hit one of our boys. At that time, well, I just imagined that I heard the lick, I ain't sure I heard it, of course, I was singing and I couldn't see good. I raised my head and I seen two or three fellows running towards a dark spot that was laying on the ground. I could tell it was the body of a man and I ran over there and I saw a soldier there laying on the ground.

Q Who was that soldier?

A It was Private Montgomery. I don't know his first name.

Q All right. Tell the Court what you did. But I want to ask you this one further thing first. I want you to tell the Court what lights, if any, were on the building in front of 719, that night?

A There are some light fixtures there, sir.

Q How many?

A Two, I think, sir, if not more. But I know there are two. But there has never been a bulb in them since we have been there, since we occupied them.

Q Was there a bulb in them on the night of August 14th?

A No, sir; there wasn't.

Q What light was there, if any, in front which illuminated the front or the area immediately in front of 719 that night?

A You mean inside or outside?

Q Well, outside or inside. You have already testified there were no lights outside.

A Well, there was some light in the latrine, but there was no window on the front of the latrine, so that would cut off in darkness, but there was a little light from the side of the latrine shining from the window.

Q Now, you have told the Court about seeing Private Montgomery lying on the ground. Now, I want you to go ahead and tell the Court what you did from that point on.

A Well, there was three or four fellows around him when I got there, that particular minutes, there, because they was closer than I was. I went straight to him and we picked him up, another fellow and myself.

Q Did you think Montgomery was knocked out at that time?

- A Well, sir, I didn't know, all I could go by was from somebody said, they said somebody hit him and knocked him out.
- Q Did you figure he was knocked out, or dead, or what did you figure?
- A Well, as stiff as he was, I figured he was dead. He was as stiff as a wedge. We picked him up and started across the street to 719, our Barracks, and I remembered that we were not supposed to pick up a man when he was out. So, I told the fellows let's lay him down, and we laid him down there in front of 719, a little bit to the front and to the left, on the sidewalk.
- Q Did you do anything trying to resuscitate or revive him?
- A Yes, sir.
- Q What did you do?
- A After we laid him down, I checked his pulse and it weren't normal, and some of the fellows struck matches for me to see him. I checked his body for bruises. To see whether he had been cut or hit or something like that and I couldn't find anything, only a little small bruise opposite this side of his face (indicating).
- Q The left side?
- A Yes, the left side. And I turned him over and began giving him artificial respiration and after giving him artificial respiration for oh, I don't know,---but a lot of men from the three companies had ganged around him and everybody was asking "How was he?" Well, you aren't supposed to flustrate anybody when a man has got hurt. I just told them he seemed to be a bit intoxicated and he would be all right, and I could see them getting together to my rear going toward the area, I don't know where they was going.
- Q What area?
- A Italian. You could hear whispers in the crowd, the fellows was talking like, "We'll teach them not to come up here and jump on our men."
- Q All right, go ahead.
- A So I gave him artificial respiration for maybe ten minutes or longer, or maybe a little less. Sergeant Gresham came up to me,---
- Q Who was that?
- A Sergeant Gresham.
- Q Sergeant Gresham. All right.
- A Yes, sir. He came up to me and asked me how bad was he hurt, and I said, "Oh, he'll be all right." And he said, he stated these words, "I should blow the Company out."

Q What were his words again?

A He said in these words, "I should blow the Company out." And I spoke these words, I said, "You aint lying," just like that. Well, from that point on, he was as close to me as I was to the floor. And he blew the whistle. He blew the whistle there, and he walked to 719.

Q Now, let me ask you this: Did Sergeant Gresham have a whistle?

A Yes, sir; he had a whistle.

Q Where did he keep it, in his pocket?

A Yes, sir, hanging on his field jacket. He kept it pinned in the lapel of his field jacket and in a pocket.

Q All right, go on.

A He blew the whistle there and he walked over to the steps of 719.

Q Now, let me ask you this right there. At the time you say that Sergeant Gresham blew the whistle, where was he with reference to you?

A He was by my side.

Q Which side?

A My left side. Well, this is the way it was (indicating).

Q Were you both standing up at that time?

A No, sir. We was leaning over like this (indicating). I was giving him artificial respiration, I was giving artificial respiration to the man and I was bending down, he was bending down by my side, and talking to me like this (indicating).

Q All right.

A After blowing the whistle there, he walked over to the steps of 719. He stood up on the steps in the doorway of 719 and from the little light that was shining out of the barracks, there was a little light shining through the door from upstairs,----

Q All right.

A (continuing) I could see him, he blew it again, and from that point on, I don't know where he went.

Q All right.

A (continuing) But I gave artificial respiration until the man was revived a little bit. You could see him coming back, you know, and his eyes had began to open when I first started, his eyes were half closed and they were hazy, like a skin over, or something had come across them. And after I got through giving him artificial respiration, I was a bit exhausted and I went inside Barracks 719 to get me a drink of water. I got me a drink of water, and then I started, ---well,

I started getting me a drink of water, but I never did complete getting a drink of water, and somebody told me there was another man hurt.

Q Did they tell who that man was at that time?

A No, sir.

Q All right. Now, go on with your story.

A He touched me when I was drinking the water and said,
A "Someone was hurt," and I turned around and I saw him. I didn't know Snow, but I knew Sanders, and I saw Sanders laying Snow on a bed.

Q Where was that?

A Barracks 719. In the first bed in the center of the aisle. So I went back and, I went back there, and Sanders got a towel, and cleaned some blood out of his eyes and off of his face.

Q He was bleeding?

A He was still bleeding, bleeding bad, and it was hot in there, and I had taken my finger and put it on the pressure point.

Q Put it on where?

A On the pressure point, on his temple, to apply pressure to check the bleeding. After the bleeding was checked sufficiently,---

Q Well, just a second---

A As soon as I got back where Snow was, another whistle blew outside. I don't know who blew the whistle nor where it came from.

Q Where were you at that time?

A I was inside the barracks, inside Barracks 719.

Q All right.

A After we got Snow,---after we checked the bleeding pretty well, somebody suggested he should be taken to the outside. It was hot in there. So they picked him up and taken him on the outside, and I completed my drink of water then. I started outside. The First Sergeant was bringing the men in the barracks. The First Sergeant says, come on back in the barracks and assemble and stay in the barracks. And that is as much as I know about the happenings.

Q Now, tell the Court whether or not you ever at any time went down to the Italian area that night?

A No, sir; I did not, sir.

Q You understand what we mean by the Italian area?

A I know exactly what you mean by the Italian area, sir.

Q All right. I want you to tell the Court also whether or

not any time that evening you ever blew a whistle?
A No, sir. Sir, I can't remember blowing a whistle, but one time in my life. I have never owned a whistle.

Q I want you also to tell the court whether or not at any time on the night of August 14th you ever went looking for a whistle?

A No, sir; I definitely did not, sir.

Q And I want you to tell the Court whether or not on the night of August 14th you ever asked anybody for a whistle.

A I did not, sir. I was in no position to ask anyone for a whistle. There was a man hurt, and I knew how to render first aid, and I gave the man first aid, and when I got through working on these two men, the fight was over.

Q Is there anything else you have not told the Court, now, that you would like to tell the Court in connection with this case?

Trial Judge Advocate: May it please the Court, I suggest that Counsel ask the questions. That is just exactly where difficulties arise and these matters get into the record that have no business in the record.

Law Member: That may lead to serious difficulties on the Trial Judge Advocate's cross examination of this witness.

Defense: Well, I assume he could be stopped.

Law Member: Well, I know, but I think you better frame a proper question and not ask a blank one that way.

Q Well, I will put it this way. Is there anything else, Corporal Larkin, that you would like to tell the Court in respect to your activities on the night of August 14th?

A Yes.

Law Member: Now, I think that is still objectionable and such a question might lay this witness open to cross examination which might be highly otherwise improper.

Defense: Well, I am confining his activities to the night of August 14th during the period he has testified to here.

Law Member: Well, of course, that opens up the cross examination for all those activities on the night of August 14.

Defense: I understand that. I am perfectly willing

for Counsel to question him about it. Has the Court ruled?

Law Member: Well, I certainly am very much concerned about the form of the question. If you wish to ask a question,---

Defense: Well, I will withdraw the question, then. You may examine, Counsel.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Corporal, when were you returned from overseas?

A On the 14th of,---I reached the United States on the 14th of October, I believe, sir. I remember well it was the 14th.

Q Well, you were at Fort Lawton some time in the middle of October, then, 1944?

A Yes, sir.

Q You remember Major Manchester, Captain Branand, and I talking with you?

A Quite well, sir.

Q In fact, we talked with you some two or three times, didn't we?

A Twice, sir.

Q Twice?

A Yes, sir.

Q And those conversations were longer than just a few minutes, were they not?

A Well, not with them, but you and I, sir. We talked from eight o'clock till 12:30.

Q Weren't they present, too?

A Part of the time.

Q It was not from eight to 12:30, was it?

A Eight-thirty to twelve, I believe.

Q Was it that long?

A Well, I was taken out of the guardhouse at 8:30.

Q Then you were brought to the Port?

A No, sir; I was brought just across the street.

Q Oh, yes; you are talking about the first conversation?

A Yes, sir.

Q All right. Let us see, now, there was a conversation of a few hours, Major Manchester and Captain Branand were present, weren't they?

A Part of the time, sir. They left some time. They were not there all the time.

Q Weren't they present the whole time?

A No, sir.

Q For the first conversation?

A No, sir.

Q Weren't they present at the whole time at both conversations?

A No, sir, they was not, sir.

Q All right. You say the first conversation was one of several hours?

A Yes, sir.

Q And the second conversation, was that just a few minutes, or was that several hours, too?

A I can't remember it as well as I can remember the first one, sir.

Q You can't remember it as well?

A No, sir; but I didn't have one but just a few minutes. I had one when you all read from my Charges, it lasted,----

Q (interposing) Well, that was after the Charges were filed?

A Yes, sir.

Q I was not even present then.

A Yes, sir. You was present in the building.

Q Well,---

A (interposing) Don't you remember, sir? You gave me a cigarette.

Q That was the second time?

A That was when my charges were read.

Q Well, in any event, I had at least I had at least two talks when these two men were present?

A Yes, sir.

Q And the first one was several hours or, you don't remember how long it was?

A Yes, sir.

Q It was?

A I believe so.

Q Did you ever tell Captain Branand or Maj. Manchester or me, or anyone of us, any solitary thing about Sergeant Gresham blowing a whistle that night?

A I did not, sir.

Q But you told the Court that Sergeant Gresham said that he should blow the Company out.

A No, sir, I said; "He should blow the Company out," he said that.

Q And you said what?

A I said, "You ain't a lying."

Q Are you sure you said that?

A Those are my words, I am positive.

Q There couldn't be any possible question about that?

A No, sir; there is no question about that.

Q You remember it as clearly as if it happened last night?

A Oh, a lot of things has happened, a lot has transpired, but those were my words.

Q Those were your words, and they are ringing in your mind?

A No, sir; they are not ringing in my mind.

Q But you just know you said that?

A Yes, sir.

Q And you know just as positively that Sergeant Gresham said he should blow the Company out?

A He either said that, in words or substance, I can't remember whether he said blow the Company out, or the men out, but I know he said blow somebody out.

Q But the exact words are not so clear in your mind, but your answer is very clear in your mind?

A Quite clear, sir.

Q And that was "You aint a lying"?

A Yes, sir. Q. All right. Now, I have had this talk with you and you sat down and wrote out a statement after that in your own handwriting, didn't you?

A Yes, sir.

Q Is that statement the truth?

A It was the truth as far as it went. I was not implicating anybody. I didn't mean that; I didn't come back to do that.

Q Didn't you tell us when you gave it to us, it was the whole truth?

A No, sir.

Q You didnt.

A I told you that was a true statement as far as it goes, every word of it, as I told you.

Q What part was left out of that statement?

A That Sergeant Gresham blew the whistle.

Q That is the only thing you left out, that Sergeant Gresham blew the whistle?

A I left out something else.

Q What else?

A That a whistle was blown that I heard outside the barracks.

Q Why did you leave that out?

A I didn't need to put it in.

Q As a matter of fact, you told us repeatedly, there were no whistles blown that night, didn't you?

A No, sir; I did not, sir. I definitely did not.

Q You are sure of that?

A Yes, sir.

Q And your explanation for not mentioning anything in this statement about a whistle is that you didn't think it was necessary to put it in there?

A I didn't say that, sir. I also told you, sir, all about blowing the whistle. Don't you remember me telling you, sir, that he who blew the whistle didn't get any results, because the men were down in the area when the whistle was blown?

Q It would not be proper for me to answer that question unless your Counsel agreed to it, but I surely would answer it if he would agree? I will give you this statement in your own handwriting and see if this is what you wrote at that time?

A All right, sir. (Perusing document) There is nothing different from this than I have said in the court.

Q That is not the question.

Law Member: That is not responsive and may go out.

Q Did you or not give us this as your written statement?

A I did, sir.

Q And it is all in your own handwriting?

A Yes, sir.

Q Now, I want to ask you if you did not tell us at the time, and put in your written statement these words: "While I was giving first aid to Montgomery I heard someone say, "We should blow out the entire Company and go down there and show them that they should not come up here and jump on any of our men." You said that much, didn't you?

A The "we" shouldn't be in there. It should be "I". Instead of "we should blow out the Company," it should be, "I should blow out the Company."

Q What does that say here?

A It says, "we"

Q All right. Well, then, didn't you add this in your statement, "I said that is the thing to do."

A I said, "You aint lying."

Q All right. What does this say?

A Oh, maybe that is in the statement, sir, it has the same meaning, though.

Q Oh, it has the same meaning. Well, what does the statement say in your own handwriting?

A Where?

Q Here (indicating).

A I said, "That is the thing to do."

Q Yes, that is what you have in your statement in your own handwriting?

A Yes, sir. But that has the same meaning, sir.

Q You said first that you didn't say that, that you said, "You ain't lying"?

A Well, that is what I says, sir.

Q Well, did you say, "I said that is the thing to do," or did you say, "You ain't lying"?

A I said, "You ain't lying."

Q Well, why did you say on here then that "That is the thing to do"?

A I was saying it in words of substance.

Q Oh, you were writing it in words of substance?

A Yes, sir.

Defense: Could I see that?

Trial Judge Advocate: Yes, I will offer it to the Court.

Defense: I haven't any objection to this.

Law Member: Has it got a date on it?

Trial Judge Advocate: No; it has no date, but the testimony was it was on or about October 15th, I believe.

Law Member: May I ask if that has any other names in it?

Trial Judge Advocate: No, sir.

Law Member: Are you offering it in evidence?

Trial Judge Advocate: Yes, sir.

Law Member: The statement of Luther Larkin is received as Prosecution Exhibit 42.

The document above referred to was marked and received in evidence as Prosecution Exhibit 42.

Trial Judge Advocate: May I reserve the right of reading it to the Court a little bit later and will you agree that I may also attach this typewritten copy to it so that the Court can more readily read it?

Defense: Do you know that it is a true copy?

Trial Judge Advocate: Yes, sir; so far as I know. Suppose you check it during the noon hour, will you?

Captain Noyd: Yes, sir.

Q Now, at one of these discussions that you say we had with you, we brought in Roy Daymond, Jessie Sims, and Alvin Clarke, didn't we?

A Yes, sir.

Q And you asked us to bring them in, didn't you?

A Yes, sir.

Q So that you could take with them.

A Yes, sir.

Q And you did talk with them, didn't you?

A Yes, sir.

Q And they told you at that time just what they testified to in court, didn't they?

A Yes, sir.

Q And what did you say to Roy Daymond?

A Pardon me, sir. Only one thing, I didn't mean that, sir. There was only thing.

Q What was that?

A Jessie Sims stated in court that he saw me blow a whistle, and he also stated that he didn't come downstairs until after the whistle was blown?

Q You said he didn't tell you anything like that at the time we gave you the privilege of talking with them before the trial?

A Yes, sir; that's right.

Q And that is the only difference?

A I beg your pardon?

Q That was the only difference from what those boys told you at that time, Jessie Sims, Roy Damond, and Alvin Clarke, than they testified here in court?

A All except one thing.

Q And you have mentioned that one phase of it?

Law Member: Well, I just want to know whether the Corporal knows whether or not he is talking about what these men testified to or the conversation that took place previously.

Q That is what I am asking, if the testimony here was not the same as these men told him at the time we accorded him the privilege of talking with them. Do you understand that?

A Yes, sir; I understood it.

Law Member: What is the difference?

The Witness: H e states it.

Q Who do you mean by "he"?

A Jesse Sims stated down there that he saw me blow the whistle or blow a whistle. He stated in court that he did not leave a crap game from upstairs until after the whistle was blown. That is the difference in it.

Q That is the one thing you say is the difference?

A Yes, sir.

Q But aside from that evidence, everything Roy Daymond and Jessie Sims, and Alvin Clarke testified to here, they told you to your face some three weeks prior to the trial?

A Yes, sir. Not meaning it is true, sir, but they said it.

Q Well, that is all I asked you.

A Yes, sir.

Q After Roy Daymond got through testifying he saw you running upstairs and asked for a whistle, didn't you testify Roy Daymond was,---you said "Roy, you are all right."

A I said, "Roy you are all right, but you are lying." Don't you remember that, sir?

Q No, you did not tell me that,---if you are going to insist on asking me questions. I asked you at that time if you did not said to Roy Daymond, "Roy you are all right," and isn't that all that you said to Roy Daymond at that time?

A No, sir.

Q Well, at that time, Major Manchester and Captain Branand and I were present, were we not, when those three men were brought in?

A No, sir.

Q Who was present?

A I can remember you, and one other officer. I don't know who he was. I don't know whether it was the Captain,---another Captain, or whether it was Major Manchester, but it looked like to me it was Major Manchester. The other officers were not present when they talked in company. It was only you and I in the room at first, and when this officer brought them in, then it was that much more.

Q As a matter of fact, there was a fourth officer present; there was four present at the time of that interview, wasn't there?

A When those men were in there with me?

Q Yes.

A You mean the negro soldiers that came in?

Q Yes, those three?

A No, sir; there was no other officers, no four.

Q That is all you remember of it?

A Yes, sir. At the time they were in there.

Q You were given the privilege of talking with those men at that time?

A Yes, sir.

Q And when you finished talking with them you gave them a little speech, didn't you?

A Yes, sir. I told them what the truth was.

Q And after that you were taken back and those men were also taking back?

A Yes, sir.

Q Now, you heard Daymond's testimony in this court, didn't you?

A Yes, sir.

Q And you heard Jessie Sims' testimony?

A Yes, sir.

Q And you heard Alvin Clarke's testimony?

A Yes, sir.

Q And you also heard Sergeant Gresham's testimony?

A Yes, sir.

Q And several told you that Sergeant Gresham has said that you blew the whistle?

A No, sir.

Q Well, I mean that he saw him in the orderly room. That is my error. Didn't we tell you that Sergeant Gresham had said when he came down to the orderly room that he saw you there?

A No, sir.

Q What did he say?

A You connected Sergeant Gresham with me in no way, sir. You never mentioned his name while I was in there.

Q Did you connect his name, or mention his name in any way to me?

A I did not, sir.

Q How about Corporal King?

A No, sir; you never mentioned his name.

Q I never mentioned his name either to you?

A No, sir.

Q You heard his testimony here, didn't you?

A Yes, sir.

Q And you heard the testimony of Corporal Cunningham, didn't you?

A Yes, sir.

Q In this court room?

A Yes, sir.

Q And you heard the testimony of Addison George in this court room, too, didn't you?

A Yes, sir.

Q And how long have you known Roy Daymond?

A Oh, not very long, sir.

Q Well, just tell this Court now how long you have known him?

A Well, I have been in the Company since April, I think, sir. I am not sure. Anyway, sir, I will explain this to you. He was not in my section. The men I moved with were the men who went on detail with me; when I came back off detail, I would take an get chow and change my clothes, and I would be with these men, and I would go down town, and, I lived down town, then. I didn't know his men in his Company, only from the,--- I knew some of the non-coms and the men who was in my section.

Q Well, now, let us get the answer to that straight here. I want to know how long you had know him. Would it be since April?

A No, sir; I had not known him since April.

Q Well, what month, do you remember approximately what month it was when you first knew Roy?

A Well, to tell the truth,---

Q (interposing) That is what we want.

A (continuing) I knew his face when I seen it, but I didn't know his name. But I knew he was one of the men in the Company when I would see him on the street.

Q You knew him on the night of August 14th?

A By name?

Q You didn't?

A No, sir.

Q You didn't?

A Well, I wasn't too sure. I knew there was a guy named Roy Daymond, but, truthfully, I don't know.

Q Well, you had a faint suspicion that the man that was with you was Willie Montgomery and the Sergeant was Roy Daymond?

A No, sir.

Defense: Of course, Counsel is trying to create the implication now that it is evidence of his blowing a whistle, or that,---

Trial Judge Advocate (interposing): Well, there is evidence that it was him.

Law Member: Now, let us stop this quibbling, Counsel.

Defense: Well, if the Court please, I don't think Counsel should ask these questions that have a double meaning. If he wants to ask a question, whether he was with them or not, let us establish whether they were with him or not.

Law Member: I don't think the question has any double meaning. The Witness Daymond was not with them. He said, no.

Q The truth of the matter is this, that you and Roy Daymond and Willie G Jones, and Montgomery were all together the night of August the 14th, just as Roy Daymond has testified here in court, weren't you?

A No, sir.

Q And didn't you, Roy Daymond, and Willie Jones, after Montgomery was struck by an Italian, throw rocks at the other Italians?

A No, sir.

Q And didn't you after that then return to your barracks to help carry Willie Montgomery,---first, you helped carry Willie Montgomery, didn't you? Didn't you help carry Willie Montgomery over in front of 719?

A Yes, sir.

Q And where did you pick him up?

A Over at the bunch, sir.

Q And where was that?

A Well, I am not too familiar with the map.

Q Well, I will explain anything to you that you want to know. Here is your barracks, 719, and here is Virginia Avenue, and here is the 568th mess hall, and here is Lawton Road. You are acquainted with all of that?

A Yes.

Q Now, where did you pick him up?

A Picked him up just off that sidewalk; where is that sidewalk?

Q What sidewalk?

A Well, just before you get in here, it was right in here somewheres (indicating).

Q That would be sort of east of the mess hall and right close to Lawton Road, right close to Lawton Road and Virginia Avenue,---I mean south?

A I couldn't say, sir.

Q Well, how close to this mess hall was it,---you know where Lawton Road is?

A Well, it was out towards this road.

Q What road?

A Lawton Road. This is Lawton Road?

Q Yes, that is Lawton Road.

A It was out towards Lawton Road and Virginia Avenue, it was in here, yes, just off the sidewalk.

Q Was it across the street from 719?

A Yes, sir.

Q It was over on the other side of the street from 719?

A Yes, sir.

Q And you knew where a little fence ran there right close to the mess hall?

A I think so, sir.

Q How close to that fence was it?

A Oh, I can't tell. It was dark; it was night.

Q But you know it was across the street from 719?

A I do that, sir.

Q Was anyone carrying him at the time you helped pick him up?

A Someone was helping me.

Q But did you pick him up off the ground?

A Yes, sir.

Q Then, in other words, Willie Montgomery was lying on the ground?

A Yes, sir; he was lying on the ground.

Q And you came along and helped pick him up?

A Yes, sir.

Q And who were the others that helped carry him?

A I don't know, sir; it was dark, and I paid no attention to it.

Q Was Roy Daymond one of them?

A I don't know, sir.

Q Was Willie Jones one of them?

A I don't know, sir.

Q How many were there?

A Oh, I don't know. I will tell you, it was three or four.

Q Three or four?

A Yes, sir. And the exact number I can't say, sir.

Q Well, you don't know the name of a single one?---

A I just,---

Q (interposing) Now, just a minute. Let me finish my question first, I had not completed it. You don't know the name of a single one who helped you carry Willie Montgomery from across the street to in front of Barracks 719?

A No, sir; I do not. Sir, it was dark, and during excitement like that, you don't have time to pay any attention to anybody.

Q How did it happen you saw Willie Montgomery laying down on the ground?

A Somebody screamed and said this Italian hit one of our boys.

Q Somebody screamed?

A Yes.

Q And that scream interrupted your singing?

A Yes, sir.

Q And you immediately ran over there where you saw this man lying on the ground?

A Yes, me and others.

Q And there were three or four of you in all?

A It was three or four that was closer than I was that was there when I got there. But there were others that came along with me.

Q How many carried him?

A Two of us.

Q You and one other person?

A Yes, sir.

Q And you don't know who that was?

A I do not, sir.

Q Now, did you see anybody running from where Willie Montgomery was lying?

A Yes, sir.

Q Who did you see running?

A I don't know, sir.

Q Well, were there three men running?

A Yes, sir.

Q Which direction were they running?

A They were running towards the Italian area, sir.

Trial Judge Advocate: Now, if the Court please, I am going to be with this witness a while longer.

President: The Court will recess until 1:35

The court adjourned at 12:10 p.m., to reconvene at 1:35 p.m., same day.

AFTERNOON SESSION

The court met, pursuant to adjournment, at 1:35 p.m., December 9, 1944, all of the personnel of the court, prosecution, and defense, who were present at the close of the previous session in this case, being present.

The accused, reporter, and interpreter, were also present.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Is the Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused are present, and that all members of the Court are present, as well as the personnel representing the accused and the personnel for the prosecution.

President: Corporal Larkin.

Corporal Luther Larkin, resumed the stand and testified further as follows:

CROSS EXAMINATION

(Continuing)

Questions by Trial Judge Advocate:

Q You are reminded, Corporal, that you are still under oath.

A Yes, sir.

Q Corporal, about how long did you administer first aid to Montgomery?

A Well, sir, you mean the whole thing?

Q Yes.

A I couldn't definitely say, sir.

Q I realize that, but was it a matter of two minutes, three minutes, or longer?

A Oh, no, it was much longer than that.

Q Well, about how long?

A Well, I should say about five minutes. I would say I checked his body to see if there was any bruises on him or cut places on him. You understand. After that I gave him first aid for I should say approximately eight, ten, or twelve minutes, or maybe longer, sir. I couldn't definitely say, sir.

Q You would say it is somewhere in the neighborhood of fifteen minutes, the whole thing?

A The whole thing.

Q With Montgomery?

A Well, maybe longer, sir.

Q Well, you would say it was fifteen minutes or longer?

A Yes, sir. Oh, it could have been a little less, sir, I couldn't say.

Q Now, was anyone around Montgomery besides you while you were administering first aid to him?

A Yes, sir.

Q More than one person?

A Yes, sir.

Q Were they negro soldiers?

A Yes, sir.

Q About how many were around you?

A Oh, that -- that depends upon the time, sir.

Q Well, tell us about it at first, how many there were, and then afterwards, or at different times?

A When he was hurt, sir? Well, shortly after he was first hurt, there was, oh, a whole group of them around seeing what had happened, how bad he was hurt. I couldn't say how many there were. There was a lot of men. There is three Port Companies, and there was quite a few from each Company was there.

Q You are sure there was some men from each Company that were there?

A Oh, I couldn't be sure.

Q Well, you say there were some men there from each Company; what did you base that statement on?

A Well, you see, the three companies was right there together. I based it on that, sir. And you could hear anything that happened from one Company, you could hear all through the Companies.

Q Well, you said there were some men from each Company there. Now, do you know there were some men from each of the three Companies that were there, or are you just guessing at it?

A No, I don't know that.

Q You don't know that?

A No, sir.

Q Now, when you first started working on him, there was just a few men around you?

A Yes, sir.

Q And then the numbers increased?

A Yes, sir.

Q And you got up once or twice while you were working on him?

A Only once.

Q What did you do at the time you got up?

A I left him.

Q You left him?

A Yes, sir.

Q About how long were you away from him?

A I never went back to him.

Q Well, I asked you if you left him once while you were working on him. You mean you did not leave him at all while you were working on him?

A While I was working on him, no, sir.

Q You never did leave and come back, you just kept on working on him until you were through?

A Yes, sir.

Q Were you standing over him all the time? or,----

A No, sir; I was standing over him.

Q The entire fifteen minutes you were over him?

A Yes, sir.

Q When you first started working on him, there were how many men there approximately?

A Oh, I couldn't say, sir.

Q Would you say three or four?

A Oh, there was more than that.

Q When you first started working on him?

A When I first started working on him.

Q When you brought him across from 719, ---from across the street over to 719, you mean to say there were not over three or four there at that time?

A There were not more than three or four when I went and got him and brought him over. I got him back in the area that the 650th occupied, and more men had gathered around and I started working on him and there was more than three or four at that time.

Q Well, about how many?

A I couldn't say, sir.

Q All right. Then how long did it take you to get him

from where you saw him lying, and bring him over to in front of 719?

A Only a matter of seconds.

Q Well, you are telling this Court that although there was only three or four men present when you picked him up that there was already a large number there when you had him in front of 719?

A Yes, sir. The number had increased twice as much.

Q Then you would say by that time there were some eight or ten men there?

A Yes, sir; or more.

Q Can you give this Court the name of a single person who was there at that time?

A Yes, sir.

Q All right, give it to us.

A Robert Sanders. Private Robert Sanders.

Q Private Robert Sanders. And he is one of the accused?

A Yes, sir.

Q All right, who else?

A Private Willie G. Jones.

Q And he is another accused?

A Yes, sir. Those are the men that I know was there because they talked with me.

Q You know those two accused were there?

A Yes, sir.

Q Do you know of any man who was there at that time who is not an accused?

A No, sir.

Q Do you know of a single one?

A Sir, unless we had a personal conversation, unless they talked with me personally, no.

Q Then the answer is, you don't know of a single one?

A No, sir.

Q The reason you mentioned Willie Jones and Roy Daymond and Willie Montgomery, you were there at the time Montgomery got hit?

A No, sir.

Q You were not?

A No, sir.

Q When did you see, Robert Sanders?

A When I was rendering artificial respiration.

Q To Willie Montgomery?

A Yes, sir.

Q Now, you told this Court there was a second man brought up, who also was administered first aid, too?

A That was Snow, I guess his name is Snow.

Q About how long was he brought up after you started working on Montgomery?

A I couldn't say. After I completed Montgomery.

Q How long after you completed working on Montgomery was it before Snow was brought up there?

A Oh, from the time I left Montgomery and went into the barracks, which was only a few steps, and started drinking some water, Snow was brought in then.

Q All right. And you saw Robert Sanders at the time you left William Montgomery?

A No, sir.

Q At what point did you first see Sanders?

A When he was first laid down,---will you ask that question again, please?

Q When Willie Montgomery was first laid down, was that when you first saw Sanders?

A Yes, sir.

Q Sanders brought in Snow?

A No, sir; he didn't bring him up. I testified he was the man that was laying Snow down on the bed. I don't know whether he brought him from where he got hit or not.

Q Well, he was the man that had charge of Snow when you first saw Sammie Snow?

A Yes, sir.

Q And you gave us the name of two accused, Willie Jones and Sanders, whom you saw there at the time that you were working on Willie Montgomery?

A Yes, sir.

Q Well, were they among that first eight or ten or twelve men that you saw you saw?

A Yes, sir.

Q Now, after that time there was quite a group around you and Willie Montgomery, wasn't there?

A Yes, sir.

Q Can you give us the name of a single person who was around you and Willie Montgomery among that large group?

A Who spoke words to me?

Q No, who was there.

A Those are the only ones I could state.

Q Anyone you saw there?
A Sir, I wasn't noticing the heads. I wasn't looking up, I was looking down with my head, and the only ones I notices were the persons that spoke words to me.

Q Who was that?
A The two I have named, and Sergeant Gresham.

Q Can you give us the names of any other persons who were there?
A No, sir.

Q That you saw around there?
A No, sir.

Q No other person?
A No, sir.

Q And when you got up to leave Willie Montgomery was anybody around him then?
A Yes, sir.

Q A large number?
A Not a large number.

Q About how many?
A Oh, I couldn't say; it wasn't very many.

Q Well, how many; then, fifteen, twenty, twenty-five, or thirty?
A It weren't that many, sir.

Q Well, how many were there approximately?
A Oh, approximately, that is pretty hard to say, sir.

Q Well, were there over ten or less than ten.
A Oh, I would say around ten not being sure.

Q Around ten. And you got up because you were satisfied Montgomery was all right?
A That he was going to be all right.

Q That he would be all right?
A Yes, sir.

Q And what did you do when you satisfied yourself that he was going to be all right?
A I got up to get me a drink of water, sir, because I was sweating a little bit, giving artificial respiration, sir.

Q All right, When you got up to get yourself a drink of water, give the name of a single person among those then who was present there at that time?
A I can't do that, sir.

Q You can't do that?
A No, sir.

Q All right. Now, you told the Court this morning you had known Roy Daymond about how long?
A I don't know how long I have known him, sir.

Q Well, you can give us some idea of how long you have known him, can't you?
A Well, sir, I explained to you about knowing the man. I knew him when I seen him, that's about all.

Q All right. How long had you known Roy Daymond, to know him when you saw him?
A Well, I knew the faces of men in the 650th Port Company, as I stated this morning, since I was transferred into the Company.

Q When was that?
A That was in May, I believe, sir.

Q 1944?
A Yes, sir.

Q Then you have known Roy Daymond to know him when you saw him since May, 1944?
A I wouldn't say that.

Q Well, had you known him to where you knew who Roy Daymond was for several months before August 14th, 1944?
A No, sir.

Q Well, for how long before August 14, 1944, had you known him?
A I can't say that.

Q For several weeks?
A No, sir. I can't answer that that way, sir.

Q Well, did you know Roy Daymond to where you knew who he was before August 14th, 1944?
A Yes, sir.

Q For about how long?
A I don't know, sir.

Q For a few weeks?
A I don't know how long it was, sir.

Q You don't know how long?
A No, sir.

Q Now, you heard Roy Daymond say that he saw you run up stairs, heard you ask for a whistle?
A Yes, sir.

Q Now, had you ever had any difficulty with Roy Daymond?
A I don't think so, sir.

Q Never been anything between the two of you that has been unpleasant?
A I can't remember, sir.

Q Now, you heard Jessie Sims testify that you asked for a whistle?
A Yes, sir.

Q You heard him testify that you blew a whistle?
A Yes, sir.

Q And you heard him say that you led a group of men down into the Italian area?
A Yes, sir.

Q Have you ever had any difficulty or trouble with Jessie Sims?
A Well, sir, he is just a troublemaker.

Q I didn't ask you that. I will ask that that answer be stricken.

Law Member: That will go out.

Defense: I don't think it should go out, your Honor.

Law Member: That is not responsive.

Q Did you at any time have any trouble with Jessie Sims?
A Yes, sir.

Q When was that?
A Oh, oft times when in barracks, he made statements connected with me, saying I was smart, that I was a GI, and that I thought I owned the Army, because I wouldn't play in the negro crap games. Of course, I didn't play with them, with the rest of them when they were playing.

Q Is that all of the difficulty you ever had with him?
A Only smart statements like that, yes, sir.

Q Did you ever have any physical encounter with him or anything like that?
A No, Sir.

Q Did you ever have any strong words between the two of you at any time?
A No, sir. I just ignored him.

Q You just ignored him?
A Yes, sir.

Q And you heard Alvin Clarke testify that he saw you

blow a whistle and that you lead a group of men into the area?

A Yes, sir.

Q Did you at any time have any trouble with Alvin Clarke?

A Only a few times.

Q Well, did you ever have any physical encounter with him or anything like that?

A No, sir.

Q Did you ever have any strong words with him?

A Only in getting him to work, sir.

Q Well, you would just tell him to work, wouldn't you?

A Yes, sir.

Q Then, would he work?

A Not all the time, sir.

Q Was that the only type of difficulty you ever had with him?

A It is, sir.

Q There wasn't anything personal, was there?

A No, sir.

Q Nothing personal?

A No, sir.

Q You heard Sergeant Gresham testify that you were in the orderly room when Sergeant Callahan arrived that night in the Italian area; you heard him testify to that, didn't you?

A I heard him testify to that, to something like that.

Q Did you ever have any trouble with Sergeant Gresham?

A Never; Nothing in my life.

Q As a matter of fact, you had been friends?

A I wouldn't call it that, sir. We were no personal friends. He was another soldier and I am, too.

Q But there had never been any difficulty between you two at all?

A No, sir.

Q You heard Corporal King testify when he went in the orderly room to help the M.P.'s that you were in the orderly room?

A Yes, sir.

Q Did you ever have any trouble with Corporal King?

A No, sir.

Q And you heard Corporal Cunningham testify that you ran

A into the barracks and asked for a whistle?
 Yes, sir.

Q Did you ever have any trouble with Corporal Cunningham?
 A I don't even know him, that is the truth.

Q So then you didn't have any trouble with him?
 A No, sir.

Q Then you heard Addison George testify that you came into the barracks and asked for a whistle?
 A Yes, sir.

Q Did you ever have any trouble with Addison George?
 A Not in my life, never.

Q Did Roy Daymond testify to the truth in his testimony as you heard it in this court room?
 A No, sir.

Q Did Jessie Sims testify to the truth as you heard it in this court room?
 A No, sir.

Q Did Alvin Clarke testify to the truth as you heard it in this court room?
 A No, sir.

Q Did Sergeant Gresham testify to the truth?
 A No, sir.

Q Did Corporal King testify to the truth?
 A Well, I beg your pardon, about Sergeant Gresham and Corporal King, when they mentioned me, they didn't tell the truth.

Q They didn't tell the truth, neither of them?
 A No, sir.

Q When Corporal Cunningham testified with respect to what you did, asking for a whistle, did he testify to the truth?
 A No, sir.

Q And did Addison George, when he gave his testimony about you, did he testify to the truth?
 A No, sir.

Q Each of these men told falsehoods in your opinion?
 A Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

President: Any questions by the Court? No further .

The Witness: With the permission of the Court, I would like to explain one thing to the Colonel.

Trial Judge Advocate: He is just running a risk now, Major.

Law Member: Now, let me explain something to you, Larkin.

The Witness: Yes, sir.

Law Member: The Trial Judge Advocate in his cross examination of you is limited to questions which were brought up on your direct examination by your counsel.

The Witness: Yes, sir.

Law Member: And he cannot go beyond what is brought up on your direct examination in his cross examination.

The Witness: Yes, sir.

Law Member: Now, if you voluntarily make a statement to the Court, you are running the risk of opening yourself up to further cross questioning by the Trial Judge Advocate, do you understand?

The Witness: Yes, sir.

Law Member: And before you do that, and attempt to make any voluntary statements to the Court, I prefer to have you confer with your counsel, Maj. Beeks.

The Witness: No, sir, this was just something the boys thought I spoke, when I spoke the word, no.

Law Member: You mean you want to explain some answer? Go over and talk with him, will you?

The Witness: No, sir; it was just he asked me something and I answered yes, just plain, yes. I meant to tell him, it was not meant as or for insubordination or anything like that. I didn't mean any disrespect.

Trial Judge Advocate: Oh, well, that's all right. N obody took it that way.

The Witness: Thank you.

Law Member: All right.

Trial Judge Advocate: There is one other question I wanted to ask you about that I had forgotten.

Q While you were working on Montgomery, or just after you finished working on Willie Montgomery, did it come to your attention that some men were going down

into the Italian area?

A Yes, sir. I could see them congregating.

Law Member: He has already testified to that.

Trial Judge Advocate: No.

Law Member: You asked him that and he said, yes.

Q Well, it won't hurt to have it in, I guess. I wanted to be sure. I have got another question I want to ask. You did see some colored soldiers go into the Italian area?

A Towards the Italian area.

Q Now, at what point, while you were working on Willie Montgomery there, did you see that?

A Shortly after I started.

Q Well, you were bent over Willie Montgomery, weren't you, working on him?

A Yes, sir.

Q Then how did you know they were going down into the Italian area?

A I could see that way, sir (indicating).

Q Oh, you were not looking on the man you were working on?

A Yes, I was looking at the man I was working on, but it attracted my attention and I kind of turned my head for just a moment.

Q You turned your head for just a moment and you saw some men going toward that area?

A Yes, sir.

Q How far were they from you?

A Across the street.

Q Could you recognize any of them?

A No, sir; it was dark.

Q Well, you couldn't tell us how many there were, either?

A No, sir; offhand I couldn't say.

Q You couldn't even come close to it?

A Oh, I could guess. Maybe I could guess, I don't know whether it would be accurate.

Q And that was at what time, you say, shortly after you started working on him?

A Yes, sir.

Q And was his breathing normal at that time you saw those men going to the area?

A No, sir.

Q His breathing was not normal at the time when you saw those men going down there?

A No, sir.

Q You had to work on him some more?

A A little bit longer.

Q To get his breathing normal, after you saw the men going to the area?

A I had to work on him longer.

Q But his breathing was not yet normal at that time?

A No, sir.

Q All right, let us see what you say in your statement. Now, just read to the Court,---just read out loud, so every member of the Court can hear that now.

Law Member: What is he reading from?

Trial Judge Advocate: From his own statement, Prosecution Exhibit 42.

Q Just start reading.

A "I checked his breathing and he wasn't breathing normal, so I gave him first aid." which means artificial respiration.

Q Just read what you said.

A "until his breathing was normal. At the time the men,---

Q (interposing) Now, what a minute. At the time, is that what it says?

A "At that time the men had gone down into that area."

Q Then his breathing was normal and you had finished your artificial respiration before the men started down to the area?

A No, sir.

Law Member: Now, let me see that?

Trial Judge Advocate (handing document to Law Member).

Law Member: Colonel, I can't see anything contradictory in that, he says "I checked the breathing and he was not breathing normal so I gave him first aid until his breathing was normal. At that time the men had gone down in that area."

Q All right. Let us go a little further and see. Now, what time did the men go to the area?

A Before his breathing was normal.

Q Well, how long before his breathing was normal?
A I couldn't say that, sir.

Q Well, was it right after you started working on Montgomery?
A I beg your pardon, sir?

Q Was it right after you started working on Montgomery that they started going down in the area?
A Shortly afterwards, sir.

Q Shortly after?
A Yes, sir.

Q How many minutes after you started working on Montgomery how shortly after?
A I couldn't say, sir. I couldn't say how many minutes, sir.

Q Well, now, you have told this Court you worked on Willie Montgomery about fifteen minutes?
A Yes, sir, or maybe longer.

Q Well, now, about how long had you worked on him before these men started down in the area?
A I don't know, sir.

Q Well, had you worked half of the time on him before they started down there?
A I don't know, sir.

Q You just don't know that?
A No, sir.

Q What do you mean by this statement: "We brought Montgomery to the other side of the street. I checked his breathing and he was not breathing normal so I gave him first aid until his breathing was normal"?
A What do I mean, sir?

Q Yes, what do you mean by that much?
A I mean he was not breathing right. I mean he wasn't breathing like maybe I am breathing now. He was suffering from his blow. He was gasping, you know, he couldn't get his breath.

Q So you gave him first aid until his breathing was normal?
A Yes, sir.

Q After his breathing was normal then you were through with Willie Montgomery, weren't you?
A Yes, sir.

Q Now, let me read you this entire sentence, and you tell the Court what you mean by that. "I checked his

breathing and he was not breathing normal, so I give him first aid, until his breathing was normal. At that time the men had gone down in that area"?

A I meant, sir, when I left Montgomery the men had already gone in the Italian area.

Q How long?

A I don't know, sir, how long.

Q Well, just before you left Montgomery?

Defense: This is all repetitious; if the Court, please, he has gone over this same thing before.

Trial Judge Advocate: Well, I am trying to find out what he does know about it.

Law Member: Objection overruled.

Q Was it just before you left Montgomery?

A I don't know, sir.

Q In other words, you cannot tell the Court at what point during the time you worked on Montgomery the men left to go to the Italian area?

A I can tell them this, if you will allow me, that that group left; a group of men left, going from our area, going towards the Italian area shortly after I started working on Montgomery.

Q So you are sure that shortly after you started working on Montgomery, it was shortly after that---

A That I saw the men going towards that area, yes, sir.

Q Then it must have been the first few minutes that you worked on him. It must have been the first few minutes that you worked on Montgomery then?

A I wouldn't say the first minute.

Q I didn't say that; I said the first few minutes.

A Well, yes, I guess the first few minutes.

Q While you were working on Montgomery, did you hear a whistle?

A Yes, sir.

Q Had you already started working on him when you heard the whistle blow?

A Yes, sir.

Q Well, about how long had you worked on him before you heard the whistle?

A I couldn't say, sir.

Q You were still working on him when the whistle was blown?

A Yes, sir.

Q Are you sure of that?

A Yes, sir.

Q Was the whistle blown before or after the men started in the area?

A Well, the group I saw go in the area, sir, the whistle was blown after they went into the area.

Q All right. The group you saw go into the area,---the whistle was blown after they went into the area?

A Yes, sir.

Q Are you sure of that?

A Yes, sir; I am positive of that.

Trial Judge Advocate: I have no further questions.

Defense: I have no further questions.

Trial Judge Advocate: I would like to read this statement. First, the Court may have some questions?

President: When you left Montgomery to go into the Barracks, did you ever see Montgomery again that night?

The Witness: I beg your pardon? Oh, no, sir, I did not, sir.

President: Any further questions? Witness will be excused.

Witness excused.

Trial Judge Advocate: I will read to the Court, Prosecution Exhibit 42, and I am going to attach to it a type-written copy for the convenience of the Court. Has it been checked to your satisfaction?

Captain Noyd: Yes, sir.

Trial Judge Advocate: It is correct?

Captain Noyd: Yes, sir.

The Trial Judge Advocate read Prosecution Exhibit 42 to the Court.

Law Member: Colonel, for the information of the Court, can you state for the record the date that statement was made?

Trial Judge Advocate: No, sir; but the testimony of the accused, Larkin, was that it was on or about October 15.

Law Member: The day after he came back from overseas?

Trial Judge Advocate: Well, on or about.

Private First Class, Arthur Williams, 650th Port Company, steps forward.

Law Member: Williams, as an accused in this case you have certain rights and it is my duty now as Law Member of this Court to advise you of those rights. You may take the stand as a witness in your own behalf and be sworn under oath. If you desire to take the oath and are sworn as any other witness, you are subject to cross examination by the Trial Judge Advocate and by the individual members of the Court if they see fit.

Another alternative you have is that you may make an unsworn statement, orally, or in writing, and given by yourself or by your counsel. That, strictly, is not evidence, but it will be given such consideration as the members of the Court see fit. In making an unsworn statement you cannot be cross examined on anything you say therein. Nor in a joint trial such as this can anything that you say in that unsworn statement be considered as evidence against any of your co-accused.

And you have a third alternative, that you may remain absolutely silent. You do not have to make a sworn statement, or you do not have to make an unsworn statement. You can just remain silent and the fact that you do remain silent cannot in any way be used against you. Do you understand everything I have told you?

The Accused: I do, sir.

Law Member: Have you conferred with your counsel about this?

The Accused: Yes, sir.

Law Member: And have you elected to take the stand and be sworn and testify in your own behalf?

The Accused: Yes, sir.

Law Member: Swear the witness, Colonel.

Private First Class, Arthur Williams, 650th Port Company, a witness for the Defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: Private First Class Arthur Williams.

Trial Judge Advocate: And your grade.

The Witness: Private First Class.

Trial Judge Advocate: Your organization?

The Witness: Formerly, 650th Port Company.

Trial Judge Advocate: And your station?

The Witness: Fort Lawton.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q Now, speak up clearly and distinctly so every member of the Court can hear you.

A Yes, sir.

Q How old are you?

A Nineteen, sir.

Q Nineteen?

A Yes, sir.

Q And where were you born?

A Cairo, Illinois.

Q And where was your home prior to the time you were inducted into the service?

A Cairo, Illinois; sir.

Q How much education have you had, Arthur?

A Three and a half years in high school.

Q Three and a half years high school?

A Yes, sir.

Q Were you in high school at the time you were inducted into the Service?

A Yes, sir, I was drafted.

Q Did you have any sort of a civilian occupation during the time that you were going to high school?

A Yes, sir.

Q What was that occupation?

A Barbering.

Q Barbering?

A Yes, sir.

Q Now, when were you inducted into the Army?

A November 22, 1943.

Q 1943?

A Yes, sir.

Q And you were a member of the 650th Port Company on August 14th of this year?

A Yes, sir.

Q What barracks did you live in, Arthur, on August 14th?

A 668th.

Q Barracks 668. Well, did you have any particular Unofficial sort of a job that you did for the Company there?

A Yes, sir. I was the barber.

Q You were the barber?

A Yes, sir.

Q Now, calling your attention to the night of August 14th, when there was some difficulty between the colored soldiers and the Italians down there, where were you that evening?

A I was in my barracks.

Q Well, had you been in your barracks all evening?

A Without the time that I made a telephone call.

Q Well, after the time that you had your dinner, that evening; did you go any particular place?

A I went to the Service Club and made a phone call right after chow.

Q Were you in the Post Exchange?

A Yes, I was.

Q When were you in the Post Exchange?

A The following evening,---the evening of August 14th, I went down to the Post Exchange.

Q What did you go down there for?

A To purchase some commodities.

Q What were you going to do with them?

A Well, I was going to sell them on the train.

President: What did he say he purchased?

Defense: He purchased some commodities to sell on the train, getting ready for business, I guess.

Q Well, where did you go from the Service Club? Back to your barracks?

A Yes, sir.

Q What time was that?

A That was approximately 7:00 o'clock.

Q About 7:00 o'clock?

A Yes, sir.

Q Now, tell the Court whether or not you ever went out of your barracks any time after that?

A No, sir; I didn't. Never left the barracks.

Q What were you doing in there that evening?

A I was barbering.

Q And by barbering you mean you were cutting hair?

A Yes, sir.

Q Did you have just a few customers that night or did you have a lot of customers?

A Well, earlier in the evening our Company Commander,--- you know, when we have formation,---well, our Company Commander informed all of the soldiers to get GI hair cuts and that was my job to give them all GI hair cuts, if possible, if I could do it.

Q Well, the fact that the Company Commander told them all to get GI haircuts, does that have any connection with what you were going to do the next day?

A No, sir; he just told them, "You all get a GI haircut, because we were going to a pretty warm climate."

Q Do you know how many haircuts you gave that night?

A I don't know definitely, but I made ten or fifteen dollars that night.

Q Did you cut any hair on credit that night?

A Yes, I did.

Q And how much did you charge for a haircut?

A Thirty-five cents.

Q Do you have any idea, can you advise the Court about what time it was that you finished cutting hair that night?

A I finished cutting hair about 11:30.

Q What is the first information that you personally have of any difficulty that night between the colored soldiers and the Italians?

A Well, I didn't have any difficulty. I,---in fact, it was an unusual incident.

Q Yes, I understand that. But what I am asking you is, what is the first information that you had that anything took place that night, when did you first know about it?

A Learned about it the next day.

Q The next day?

A Yes, sir.

Q Now, I want you to tell the Court whether or not you were ever down in the Italian area?

A No, sir.

Q On the night of August 14, 1944?

A No, sir. I never entered the Italian area on August the 14th.

Defense: I think you may examine, Counsel.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Now many heads of hair did you say you cut that night, approximately?

A Approximately between \$10 and \$15.

Q Well, about how many would that be?

A Well, I don't know just how many it would be.

Q Well, did you cut as many as twenty heads of hair that night?

A Probably more or probably less.

Q Well, which was it?

A Well, I don't know definitely.

Q Well, could it have been only fifteen?

A I wouldn't be sure. I wouldn't know, sir, how many.

Q Well, you said probably more, probably less. I am wondering what you meant by that. Do you mean by that it could have been as few as fifteen?

A It could have been more than fifteen, I am positive it was more than fifteen.

Q Are you positive it was more than twenty?

A Yes, it was more than twenty.

Q Are you positive it was more than twenty-five?

A Well, I don't know definitely. In fact, I couldn't keep tab of them. I didn't have no checks or anything like that.

Q You are just guessing at the number?

A Approximately, yes.

Q Well, when did you start cutting hair, what time?

A After I come back from the PX, seven o'clock.

Q And you didn't stop until 11:30?

A About that, yes.

Q What did you do at 11:30?

A What did I do?

Q Yes.

A Started packing my duffle bag.

Q Same place you had been cutting hair?

A Yes.

Q You just stayed in there?
A Yes.

Q And after you stopped cutting hair and started packing your duffle bag, how long did it take you to do that?
A Well, I don't know how long it took. I was around and checking barber equipment, and Army equipment. I had my stuff all the way around there that I had to look after and look for it, and get it together.

Q How long did it take you to pack your duffle bag?
A Well, if you have all of your equipment together, it don't take very long.

Q Could you give us an estimate of what it took you that night?
A I couldn't tell you.

Q When did you go to bed?
A When an OD and a Lieutenant came in.

Q When was this?
A I imagine it was after eleven

Q Well, I imagine it was, too. You told us you didn't quit cutting hair until eleven thirty?
A Yes.

Q And it took you quite a while, you say, to pack your duffle bag?
A Yes, it did.

Q So it must have been nearly twelve o'clock when you went to bed?
A I don't know whether it was twelve o'clock or not.

Q These haircuts you were giving were to men from your Company?
A From all the companies, sir. Q. Most of them, however were from your company?
A Yes, the 650th.

Q Your Company is the 650th?
A That's right.

Q Give me the names of some of the men whose hair you cut that night?
A Sergeant Willie Palmer. And Frank Williams; and Aguinaldo Thomas.

Q And who else?
A. Johnnie Ceaser.

Q That is one of the accused, Jonnie Ceaser?
A Yes, sir; and several others.

Q That is all that you can recall?

A Yes, sir.

Q You were asked once before to give the names of those whose hair you cut that night?

A I don't,----

Q (interposing) Didn't Col. Williams ask you on October 2, 1944,---didn't he ask you this question" "Whose hair were you cutting?" and didn't you say, "I don't know definitely whose hair I was cutting, but I was participating in barbering?"

A That is what I said.

Q You did not give him the names?

A Because I didn't know right then.

Q Well, how did you find out after that?

A Because I was thinking about it.

Q You got to thinking about this afterwards?

A Yes, sir.

Q Did you also go to thinking about what hour it was when you finished cutting hair and packing your duffle bag?

A No, sir.

Q You don't know whether it was 1:30 or 10:30?

A No, sir.

Q But you got to thinking about it after Col. Williams talked with you about it, and you decided you cut these four men's hair?

A Yes, sir.

Q After you were cutting hair, up to 11:30, did you ever hear any noise while you were cutting hair?

A No, sir. Just up in the mess hall.

Q And that was an electric guitar?

A I don't know what it is, but it was quite a little noise.

Q You heard that about eleven o'clock?

A I heard it throughout the evening, throughout the night.

Q Was that noise still on when you were barbering at 11:30?

A When I was barbering it was still on.

Q But at 11:30 it was still on, I asked you?

A I supposed.

Q Well, now, tell us whether it was on or whether it was not?

A It was still on.

Q You are positive now?

A Positive.

Q When you were packing your duffle bag, was the noise still on.

A That is when the OD and officer came in.

Q After you finished barbering and started packing your duffle bag, did you still hear that noise in the mess hall?

A Yes, sir

Q You still heard it?

A Yes.

Q Did you continue to hear that noise in the mess hall the entire time you were packing your duffle bag?

A Well, I heard it throughout the night.

Q Up until what time in the morning did you hear that noise in the mess hall?

A Until the OD came in.

Q When was that, about one o'clock?

A I would say approximately that.

Q Approximately one o'clock?

A Yes.

Q Was that the only noise you heard throughout that night?

A Yes, sir; that's the only noise I heard.

Q You heard no screaming or hollering?

A No, sir; I didn't.

Q And you didn't hear any whistles blown?

A No, sir.

Q And you didn't hear any rocks thrown against windows or barracks?

A No, sir.

Q And you heard no windows crashing or broken glass, or anything like that?

A No, sir.

Q You didn't hear the voices of a number of men talking or anything like that?

A No, sir.

Q You were pretty close to that,---will you come over here just a minute. You see, this is Lawton Road, running into the Italian area, and here is Virginia Avenue, and here is Barracks 668, that is your barracks, wasn't it?

A Yes, sir.

Q And where was your bunk in those barracks, 668?

A About in the center of the barracks.

Q About the center of the barracks?

A About here, yes (indicating to map).

Q Well, it was on the northerly, or the north side, wasn't it?

A Yes.

Q And you are telling this Court that you did not hear any noise or noises on the night that I have just asked you about, throughout that whole night?

A No, sir.

Q And all you heard until about 1:00 o'clock in the morning was some electric guitar? or some such noise as that over in the mess hall?

A I wouldn't say it was an electric guitar.

Q Well, some kind of music?

A It was a reception noise.

Q Up until one o'clock in the morning.

A Until the OD came in.

Q Well, you said that was about one o'clock?

A Oh, it was approximately that time.

Q Now, shortly after this incident occurred down in the Italian area, you and several hundred other negro soldiers were placed in a show-up, weren't you?

A Show-up?

Q Yes.

A Yes.

Q And an Italian soldier identified you as having been in the orderly room?

A You're talking about being in the mess hall at Camp Jordan?

Q Wherever it was.

A Yes, that was in the mess hall at Camp Jordan.

Q And an Italian soldier identified you as having been in that orderly room?

A Yes.

Q That was the same Italian that identified you in the court room the other day?

A Yes, sir.

Q How long have you known Sergeant Gresham?

A I have known Sergeant Gresham since reception center, at Fort Sheridan.

Q How long has that been?
A I left Fort Sheridan December 14th.

Q Last year?
A Yes, sir.

Q In other words, you have known Sergeant Gresham about a year?
A Yes.

Q Did you and Sergeant Gresham ever have any difficulty?
A No, not that I know. Only that I cut his hair, sir, at the Reception Center.

Q There wasn't any difficulty about that, was there?
A Well, he didn't want to get it all cut off.

Q He never did cuss you out or anything, did he?
A Not that I know of.

Q Well, since the time you made the mistake of cutting that hair shorter than he wanted it cut, you have not had any difficulty?
A I loaned him money.

Q And he repaid it?
A Yes, but I had difficulty in getting it.

Q But you finally got it?
A Yes, finally got it. But some he still owes for a haircut.

Q Did you ask him for it?
A No, sir. When he was in the Company I asked him for the money and he said he didn't have it right then.

Q That was the only time you asked him for it?
A Yes, sir.

Q How long has it been since you asked him for it?
A In the Company?

Q Well, how long ago was that?
A When the Company was activated.

Q Well, now, aside from the fact that you claim he owes you for a haircut, there has never been any big difficulty between the two of you, has there?
A No, sir.

Q He has never mistreated you, in any way?
A No.

Q You heard his testimony in the court room the other day when he said when he arrived down there he saw you outside that orderly room in the vicinity of the orderly room?

A Yes, sir; I heard that.

Q And he is testifying to an untruth?

A That is right.

Q And this other witness that you saw identify you, you never cut his hair?

A No, sir.

Q And he doesn't owe you any money, does he?

A No, sir.

Q Who was in your barracks from the time that you quit cutting hair while you were packing your duffle bag?

A Well, Sergeant Willie Palmer and Sergeant Ben Thomas and Willie Basden and that is practically all I recall.

Q That is all you recall. Now, was Willie Basden there the entire time that you were there?

A Yes, sir.

Q While you were packing your duffle bag?

A Yes, sir.

Q And was Willie Basden there while you were cutting the hair of some of the boys?

A Yes, sir. His bed was not very far from where my bed was.

Q In other words, you and Willie Basden were there the entire evening?

A No, sir; I was cutting hair.

Q But Willie Basden was there in your immediate barracks?

A Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

Trial Judge Advocate: Incidentally, the Willie Basden we are talking about is one of the accused?

The Witness: Yes, sir.

President: Any further questions?

Major Crocker: I have one.

EXAMINATION BY THE COURT

Questions by Major Crocker:

Q About how many men slept in your barracks?

A Let's see, I don't know just definitely how many men there were, but I know there was,---out of all the men there was in our Company, there were two barracks shared by the 650th Port Company; that is all. I wouldn't know whether there was more than us.

Q Were there two floors or one floor there?

A One floor.

Q When you were packing your duffle bag, was there lights on in the barracks?

A Yes, sir.

Q Were there other men up and dressed at that time?

A Yes, sir.

Q Did you see some men come into the barracks?

A No, sir, I did not.

Q Did you see any go out?

A No, sir.

Q About how many men were still up at that time?

A It was just, you know how a barracks is, when you see them all over the barracks.

Q They were walking around all over the barracks?

A Yes.

Q But you didn't see anybody come in?

A No, sir. You see, I was in the back of the barracks and whoever came in the front door, why I didn't know, and whoever left out of the front door, well, I couldn't see it.

Q Well, you didn't hear anybody say anything about any fight in the Italian area?

A No, sir; not until the next morning.

Major Crocker: No further questions.

President: Any further questions by the Court?
Witness will be excused.

Witness excused.

Private Loary M Moore steps forward.

Law Member: Moore, as an accused in a Military Court Martial, you have certain rights and it is my duty to explain those rights to you at this time. You may be sworn as a witness like any other witness and give your testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then, however, be subject to cross-examination by either the Trial Judge Advocate or by the individual members of the

Court if they see fit.

Or, you may make an unsworn statement in denial, explanation or mitigation of the offense with which you are charged. This unsworn statement can be made orally or in writing, and given either by yourself or by your counsel. If you give such an unsworn statement you are not subject to any cross examination by anybody. It is not strictly evidence, but it will be given such consideration by the Court as the members thereof deem fit.

Finally, you may remain absolutely silent, and not give any statement, either sworn or unsworn, and the fact that you do remain silent cannot be used against you.

Now, do you understand all of that, Moore, or do you want me to go further into it?

The Accused: I understand it, sir.

Law Member: Have you talked this over with Major Beeks?

The Accused: Yes, sir.

Law Member: And have you elected to take the stand and be sworn as a witness?

The Accused: Yes, sir.

Law Member: You may swear him, Colonel.

Private Loary M Moore, 650 Port Company, called as a witness by the Prosecution, was sworn and testified as follows:

Trial Judge Advocate: That your name?

The Witness: Private Loary M Moore.

Law Member: Now, speak up so that we can hear you, will you please?

The Witness: Yes, sir.

Trial Judge Advocate: And you said you were a Private, that is your grade?

The Witness: Private, yes, sir.

Trial Judge Advocate: And your organization?

The Witness: 650th Port Company.

Trial Judge Advocate: And you are here at Fort Lawton?

The Witness: Yes, sir.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Assistant Defense Counsel:

Q Where were you born?

A Ellinger, Texas.

Law Member: Now, Moore, you have got to talk out loud if you want us to hear you up here and you do, don't you?

The Witness: Yes, sir.

Q How old are you?

A Twenty-three.

Q And when were you inducted into the Army?

A 5th of October.

Q 5th of October of what year?

A 1943.

Q And what did you do when you were in civilian life before you were inducted into the Army?

A Driving a truck.

Q You were a truckdriver, in other words?

A Yes, sir.

Q Now, directing your attention to the night of August 14, 1944, with reference to some trouble between the Italians and the negro soldiers, I will ask you where you were that night?

A At the show.

Q You were at the show?

A Yes, sir.

Q What time did you go to the show?

A I went to the last show, eight o'clock show.

Q You went to the eight o'clock show?

A Yes, sir.

Q What time did you get out of the show?

A I left the show about fifteen minutes to eleven or ten minutes to eleven.

Q About ten or fifteen minutes to eleven?

A Yes, sir.

Q Then where did you go?

A I came back to my barracks.

Q What barracks did you live in?

A 668.

Q What did you do after you got into your barracks?

A I went to bed, sir.

Q You went to bed?

A Yes, sir.

Q Well, where were you when this trouble occurred between the negro soldiers and the Italians, if you know?

A In the bed, sir.

Q Did you know about the trouble?

A No, sir; not then. I woke up later on at night, I was woken up and told what was going on.

Q You woke up because someone told you?

A Yes, sir.

Q And who woke you up?

A Wallace Wooden.

Q Did you stay in bed?

A I got up and put on a pair of pants and got back into bed.

Q You got up and put on your pants and then went back to bed?

A Yes, sir.

Q Did you stay in bed?

A Yes, sir.

Q Well, how is it you put on your clothes?

A Well, he said that,---I was lying up there asleep without any clothes on, and he said I had better get up and put some clothes on. And, there was going to be a line-up, and so I got up and put some clothes on. And he said they might burn,---

Law Member: Now, we can't hear you up here.

Defense: Now, talk up real loud and clearly so the Court can hear you.

Law Member: I know you can talk louder than that.

Q Now, will you state again how it came about you put on your clothes?

A I was in the bed asleep and Wallace Wooden came up to me, and asked how come are you in bed asleep with your clothes off, and he said, some of the boys are out having a fight with the Italians, and he said

you better get up and put some clothes on because they are liable to set the barracks on fire.

Q Did you get up at that time and put on some clothes and go out?

A No, sir. I went back to bed.

Q What is the next thing that happened?

A That is all I know, sir.

Q Do you know anything more that went on that night?

A No, sir.

Q Did you or did you not ever go down to the Italian area that night?

A No, sir.

Defense: You may examine.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Private Moore, Wallace Wooden that you are talking about is one of the accused, isn't he?

A Yes.

Q And he came in and told you to put on your clothes; did he?

A Yes, sir; he said I was in bed without any clothes on and he said we are liable to have to get out quick, and somebody is liable to set the barracks on fire, and I better get up and put my clothes on.

Q Then did you get up and put some clothes on?

A Yes, sir. I got up and slipped on a pair of pants.

Q What did you do after that time?

A Got back in my bed.

Q And that is all you put on?

A That's right.

Q And what did Wallace Wooden do, did he put on his pants, did he put a pair of pants on also?

A I don't know, sir.

Q He had a pair of pants on?

A I don't know.

Q Where did Wallace Wooden tell you to go when you put a pair of pants on?

A I couldn't recall that.

Q You couldn't recall that?

A No, sir.

Q You were not interested in what Wallace Wooden was telling you at that time, were you?

A No, sir; I wasn't interested in any fighting going on.

Q And all Wallace Wooden was interested in so far as you were concerned was just to get you out of bed and get you with some clothes on?

A Yes, sir.

Q Did Wallace Wooden hang around long enough to be sure you got some clothes on?

A After he told me, I got up and put on a pair of pants and got right back in bed.

Q Did he watch you put on your pants?

A No, sir; not to my knowledgs.

Q Did he leave?

A I think he went back to his bunk.

Q Do you know, were you watching him?

A No, sir; I wasn't watching him.

Q You don't know where he went then?

A No, sir; I don't.

Q Did you see Sergeant Gresham anywhere that night?

A No, sir; I didn't.

Q How long have you known Sergeant Gresham?

A Ever since 650th was formed.

Law Member: I didn't get that.

The Witness: Ever since the 650th was formed, since they made the Company up.

Q You heard Sergeant Gresham testify that he saw you inside the orderly room when he got down to the area there?

A Yes, sir.

Q You heard him testify to that?

A Yes, sir.

Q And you say that that is not true?

A Yes, sir.

Q You are positive of that?

A Yes, sir.

Q You did not see Sergeant Gresham that night?

A No, sir.

Q Do you know of any reason why Sergeant Gresham should say that if it were not true?

A No, sir; I don't.

Q Now, you heard Jessie Sims testify; how long have you known him?

A Ever since the 650th were formed.

Q And you heard Jessie Sims say that he saw you down in the area with a club?

A Yes, sir.

Q You did not have a club?

A No, sir; I was not even down there.

Q You were not down in the area?

A No, sir.

Q So Jessie Sims' testimony is untrue, also?

A Yes, sir.

Q And you have known Jessie Sims since the time that this 650th Company was formed, or practically since then.

A Yes, sir.

Q When Wallace Wooden came in and told you to put on your clothes, that the barracks might be burned down by the Italians, did you ask him any questions as to why he was making that statement?

A No, sir; I didn't.

Q Well, weren't you wondering why he was making that statement?

A No, sir; he just told me I better get up and put on some clothes because some of the boys had been fighting with the Italians and the barracks might be set on fire.

Q He said they might be set on fire?

A. Yes, sir.

Q And you didn't ask him whether the fight was still going on?

A No, sir; I did not.

Q You didn't ask him how the fight came out either?

A No, sir.

Q You just weren't interested?

A No, sir.

Q All you did was to get up and slip on a pair of pants and you crawled right back in bed?

A Yes, sir.

Q How long does it take you to put on a pair of pants?

A A second or two seconds.

Q Well, when you went back to bed with your pants on,

thinking you would save some time if the Italians set the barracks on fire,---that was the reason you did that, you figured you would save a second or two?

A No, sir; because he said, Italians is liable to set the barracks on fire, and I would have to get out quick.

Q And you did it because Wallace Wooden told you to do it?

A Yes, sir.

Q And I suppose if Wallace Wooden told you to go and jump out of a window, you would do it?

A No, sir, there is no reason to.

Q But you thought you would put on a pair of pants and lie in bed with a pair of pants on?

A No, sir; but I figured, I figured I might have to get out.

Q And you figured that you would save a second or two?

A Yes, sir. I figured I didn't want to get caught with my clothes off.

Q Did you go right back to sleep.

A Yes.

Q Did you have any fears about the fire?

A No, sir; I didn't have any fears about the fire at all.

Q You just dropped right back to sleep?

A Yes, sir, I went right on back to sleep.

Trial Judge Advocate: That is all.

President: Any redirect examination?

Defense: No.

Law Member: Any questions by the members of the Court?
Witness will be excused.

Witness excused.

Defense: Do you want to take a recess at this time?

President: Court will be in recess until 3:05. We will take our 15-minute recess.

A recess was taken at 2:50 p.m., and reconvened at 3:05 p.m.

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

president: Is the Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

Trial Judge Advocate: Let the record show that each of the accused is present, and that all members of the court are present, and the personnel representing the Prosecution and Defense are also present.

T/5 Corporal Herman Johnson, steps forward.

Law Member: Johnson, it is my duty to explain to you that you have certain rights as an accused before an Army Court Martial. You may be sworn as a witness like any other witness and testify in your own behalf. If you elect to so take the stand and be sworn as a witness you are subject to cross-examination by the Trial Judge Advocate and by any members of the Court if they see fit.

You may also make an unsworn statement, either orally or in writing by yourself or through counsel, and if you elect to make such an unsworn statement then you are not subject to cross examination by the Trial Judge Advocate or by anyone. This unsworn statement is not strictly evidence, but it will be given such consideration by the members of the Court as they see fit.

Your third alternative is that you have a right to remain absolutely silent and make no statement, either sworn or unsworn, and the fact that you so remain silent cannot be used against you. Do you understand what I have said to you?

The Accused: Yes, sir.

Law Member: What have you decided, or have you conferred with your counsel, Major Beeks, as to what alternative you want to take?

The Accused: Yes, sir; I have.

Law Member: And you have elected to be sworn as a witness in your own behalf?

The Accused: Yes, sir.

Law Member: Swear the witness, Colonel.

T/5 Corporal Herman Johnson, 651st Port Company, a witness for the Defense, was examined and testified as follows:

Trial Judge Advocate; What is your name?

The Witness: Herman Johnson.

Trial Judge Advocate: And your grade?

The Witness: T/5 Corporal.

Trial Judge Advocate: And your organization?

The Witness: 651st Port Company.

Trial Judge Advocate: And your station?

The Witness: Fort Lawton, I suppose.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q Do you think you can talk louder than you have just been talking?

A Yes, sir; I can talk loud.

Law Member: That is the way to talk.

Q How old are you?

A Thirty-two.

Q Are you married?

A Yes, sir.

Q Any children?

A One.

Q Boy or girl?

A Boy

Q How old?

A Fourteen.

Q What was your occupation before you went into the Army?

A Assistant Foreman at the Packard Motor Car Company.

Q What City?

Law Member: Now, don't drop your voice. You started out fine. It is a strain to us up here to continually try to hear what you are saying.

President: Major Beeks, if you will come up here I believe you can hear him better.

Defense: Yes, it won't be quite as convenient this way, but to please the Court I will be glad to do so.

President: You can move the table up there if you wish.

Law Member: Now, when you give answers, Johnson, look at us instead of at Major Beeks.

Q I think, before we had this interruption, I think you testified you were an assistant foreman at the Packard Motor Car Company at Detroit, Michigan, is that it?

A Yes, that is true.

Q When were you inducted into the Army?

A December 11, 1943.

Q Now, you have got to speak up.

A December 11, 1943.

Q What barracks did you occupy at Fort Lawton on August 14th?

A 672.

Q Barracks 672. Now, as far as the Port Company operations were concerned, what was your specialty and assignment there?

A Crane operator.

Q Did you have any special training as a crane operator?

A I had operated a crane before I was ever drafted into the Army.

Q You had operated a crane?

A Yes, sir.

Q Were you sent to school anywhere since you have been in the Army?

A Yes, sir. And I have given lessons. I have had my training and given lessons.

Law Member: Now, you will have to speak up. You are dropping your voice again.

A Yes, sir. and I gave lessons.

Q The Army sent you to a special school to study crane operations?

A Yes, sir.

Q Outside of Company operations, did you have any special unofficial duty that you performed for the Company?

A In civilian life,

Q No, I mean while you were in the Army?

A Oh, well, yes, sir. I was a barracks orderly in barracks

672.

Q In that capacity did you press clothes?

A Yes, sir, I did.

Q Tell the Court about what clothes you pressed and who for.

A For the boys in the Company. OD's, OD shirts, summer sun-tans and a few caps.

Q And calling your attention to the night of August 14th of this year, the night there was trouble between the Italians and the colored soldiers; where were you at the time you first learned that there was trouble?

A I was in my barracks.

Q What were you doing?

A I was pressing then.

Q You were pressing?

A Yes, sir.

Q Who were you pressing for?

A For the boys in the Company.

Q Well, did you have one or two pieces of clothes you were pressing, Herman, or did you have dozens and dozens of pieces, or what was the situation?

A I don't say that I had, at that particular time, that particular night, dozens and dozens; but I had something over a dozen or more pieces, such as OD trousers and pants; I had pressed some that day, but at that particular time, that night, I don't think I had more than a dozen pieces.

Q When did you start pressing?

A Well, I had pressed off and on all the evening. Everybody was trying to get their shirts and hats and pants with creases, because that is what we were wearing on our trip. Most of us had wrinkles in our shirts and pants, and some liked creases in the back. I was putting creases in them.

Q Did you draw equipment that night?

A Yes, sir.

Q What time did you draw equipment?

A Something near seven o'clock.

Q Did you draw a trench tool?

A Yes, sir; I did.

Q Handing you what has been marked Prosecution Exhibit 38, did you draw a trench tool like that?

A Yes, sir, just exactly like that.

Q Well, now, look at that trench tool and advise the Court

whether or not you think that might have been the trench tool that you drew?

A It could have been. This number, 1145, which is my four numbers is the last four numbers, las four in my serial number.

President: What has he there?

Q It contains the number 1145, which are the last four numbers in his serial number, is that right?

A Yes, sir.

Q What time in the evening was it when you drew that trench shovel?

A Something past seven o'clock. The time could have been more past seven than I could say or, it could have been until towards seven, but anyway in the neighborhood of seven.

Q Well, did you draw any other equipment that night?

A No, sir; I never drew any other equipment.

Q You just drew the trench shovel?

A Yes, sir, that is all.

Q What did you do with it after you drew it?

A I took it to the barracks and got the stencils, so the other guys could finish stenciling their clothes and I got the stencils and my being the orderly, naturally I stenciled mine first and then passed it on to the next one.

Q After you stenciled the trench tool, what did you do with it?

A I laid it on my bed.

Q Now, where was your bed in Barracks 672?

A Near by the stove, near in the middle of the barracks.

Q Will you come over here to Prosecution Exhibit 2. Do you understand this from explanations you have heard in the court room? Well, here is Barracks 719, and here is the 650th Port Company, the one they used. And this area bounded by Lawton Road and Wyoming Avenue is known as the Italian area, and 670 is the orderly room of the 650th and 651st Port Companies, and here is Barracks 672, shown on this exhibit (indicating to map).

A Yes.

Q Now, let me ask you this. Did you have one or two doors in your barracks?

A Two, one in the back and one in the front.

Q Both were usable?

A Yes, both the same.

Q Where is this stove?

A Up in the middle of the barracks, as near as I can recall, about here (indicating).

Q About where the figures 6 number is there?

A Yes.

Q And now, with reference to where that figure 6 is, where is your bunk?

A Well, you can take this for the stove, and my bunk would be somewhere about the corner of the 7. The aisle would come right straight up from the door, and that would be my bed, a little off the aisle, facing here (indicating).

Q Your bed would be up about the middle, at the corner of the top of the figure 7, where a horizontal and vertical line comes together, where those lines come together?

A Yes.

Q All right. Now, with reference to where your bed, your bunk was, where were you pressing clothes?

A Just opposite, across from me on the other side of the stove. The stove would be something, what I would say between,---where I was working about and the bunk.

Q Well, I understood you to say a few minutes ago you put this trench tool on your bed?

A Yes, sir.

Q When did you next see that after you put it on your bed?

A I saw it the first day they had me for questioning or investigation, either way you want to put it. They showed it to me.

Q I couldn't hear your answer.

A The next time I saw it was when they had an investigation, a questioning, and they showed it to me and asked me if I knew about it, and I told them I believe I did know it by the number. The number was mine.

Q When did you first miss this trench tool?

A It was that very night. It was rather late. I was winding up my work and I was ready to pack, and my shovel was gone.

Q Now, Herman, I want you to tell this Court whether or not you ever, at any time, told anyone that you did not draw a trench tool that night?

A I have never told anyone that I never drew a trench tool.

Q All right. Now, what happened, what is the first information you had that there was trouble with the Italians?

A The first I heard of it, it was a noise outside just an ordinary voice from someone. Maybe three or four; they said there was a fight, and, I didn't know what kind of a fight it was, but I tried to listen for a minute to see if I could hear a fight, and right then I couldn't, so I figured it might have been from some of the dice games the boys were having in the Company, which there was a lot of them. I didn't pay much attention right then. A few minutes later, I would say a minute, there was a voice from the door I could hear, and I walked over to the door.

Q From where you were pressing?

A Yes.

Q Tell us what you saw.

A That is where I saw several men from my Company, and if there was any men from other Companies, I wouldn't know, but I do know there was one of the men from our Company was there, was our First Sergeant.

Q Who was that?

A Sergeant Cabral.

Q That was the First Sergeant that testified yesterday?

A Yes, sir.

Q Now, which door of your barracks did you go to?

A Well, it would be the east door, the door facing this way (indicating).

Q That would be the door facing 667?

A Yes, sir.

Q All right. Now, did you hear Sergeant Cabral say anything?

A Well, when that was first started, when they was first talking, I didn't understand what they were saying, but there was two or three things I could understand plainly, he said the trouble down there is none of our affair, and I don't want any of you boys going down there, and I am going to call the M.P.'s, and if you do go, I am going to call the M.P.'s and I am going to have a formation. If you do go, he said, I am going to have a formation, but he didn't have any formation.

Q Well, then, what did you do?

A Oh, I went back to my work, back to the table.

Q What kind of work?

A Pressing clothes.

Q Did you continue with that work or did you stop?

A I didn't stop until I was finished. But I come out a short while after that. I went back and I got my bucket for getting some water, for the iron. I was using an iron, it was an electric-steam iron and

you have to put water in it every so often. So I got my bucket and started out to the latrine for the purposes of getting some water, and I stops on the steps, and listens to the shouts for a minute or two, and went on out and got my water and came back and then I stood, stopped for another minute or two, and I could hear the shouts and then I went back and went on with my work.

Q Where did you say you had to go to get the water?
A The latrine.

Q That is Building 671?
A That would be this building (indicating).

Q All right; that is 671. And as you went from Barracks 672 up to Barracks 671, or Building 671, could you hear any noise?

A You could hear it out on the outside of the barracks. You could on the inside of the building after you got in the building, but not so well, unless you listened. It didn't seem to take much, though, after you got out here, when you come on the outside, you could hear.

Q Tell the Court what you heard?
A I could hear voices and something like a noise maybe hitting a door or a house.

Q Did you hear any vehicular traffic going up and down the street?

A That particular minute I didn't. Just when I stepped on the porch, on the back of the barracks. I don't know whether it was a jeep but anyway it was a motor of some kind passed through by the streets.

Q That was after you went from the latrine back to your barracks?

A Yes, sir.

Q Well, how long a period of time were you gone, Herman, from the time that you left the Barracks with this bucket to get some water until you got back?

A Well, from what minute I started, I wouldn't say. It wasn't over two, not over three minutes, that would be the outside.

Q After you got back, how long did it take you to complete your pressing?

A Yes, sir, it was awful late when I got through. I had just got through and my iron hadn't never got cold yet when the Colonel or either a Major, I don't remember what he was, came in with another officer and an M.P. came in and ordered Sergeant Cabral to get the lights out and I had just started to write out the letters to my wife, and send some pictures away, and I had to go to the orderly room to finish it.

And it was late, I don't know whether it was 11:30 or 12:00 o'clock. I would say that the Company Commander gave us a break though, because he knew we had a lot of work to do to get ready and everything and he said we could keep the lights on until we got everything in order that night, and we might have to leave any minute the next morning, he said, maybe seven or eight, he didn't know what time it would be. And he told us we could have the lights for whatever time we might need them.

Q Did you take a shower that night?

A No, sir; I didn't take a shower.

Q Well, Herman, I want you to tell this Court whether or not you at any time during the night of August 14, went down to the Italian area?

A No, sir; I didn't. I never made a trip in any area. The only time I was ever there was when we were down there with the Court.

Q Tell the Court whether at any time on August the 14th you were in the orderly room of the Italian area, Building 713.

A I was never there.

Defense: You may examine, Counsel.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Now this trench shovel, Prosecution Exhibit No 38, it has J and 1145 stenciled on it at several places, doesn't it?

A Yes, sir.

Q How many different places on here does that number appear?

A Five.

Q And is that the way you stencil your trench shovel?

A Well, that ain't the proper way to stencil anything, but when you get a stencil, it is customary to really get it blotted on good, and to get it started out good. That is, if you expect to use it, why it is better to do it that way than it is to blot it out some place it wouldn't stay and some other place where it should not be. I wanted to get it on good to be sure.

Q Is that the reason you blotted that number in the way you did?

A Well, when I first started stenciling, some of the numbers didn't show up plain.

Q And that is the reason you did it five times?

A Yes, sir. I probably would have went and done it ten

times, if it didn't show up good.

Q So you stenciled it five times?

A Yes, sir. After I did it that many times I felt it was sufficient.

Q So there isn't any question but what this is your trench shovel?

A I wouldn't try to make it any different.

Q

Q You are pretty well satisfied in your own mind it is your trench shovel?

A Yes.

Q When you say you first missed this trench shovel that night, when was that?

A After I was through with my work and started to pack my bag.

Q Well, let's see now. You got through with your work about when?

A Well, I don't know the exact time because I really didn't have, you know, very much attention to know what time, I didn't pay no much attention, because there wasn't no reason, no certain time the lights was to go out.

Q Was the riot still in progress when you finished working?

A No, sir, I don't think it was. There was noise, but there was so many cars, I presumed it was MP.'s so I don't guess there was any riot then. It could have been as far as I know, I didn't stop to find out, I wasn't there.

Q As far as you know it was over with?

A I felt it was. If those were the M.P.'s in the car, I felt they had stopped it.

Q So you feel that the riot was over with at the time you finished your work?

A Yes, I felt it was over with.

Q How long after that was it when you first missed your trench shovel?

A How long was what?

Q How long after you believed the fight was over was it before you missed your trench shovel?

A Well, I don't know.

Q Well, about how long was it from that; was it a few minutes after that or a long time after, or just when was it?

A Well, I don't know whether it was a long time or not, but the time I presumed it was over was when the cars was down in there, going in there. The cars, as far

as I know, never stopped going down in there, and they was busy all night.

Q Well, the question was after you believed the fight was over, how long after that time was it that you missed your trench shovel?

A Well, I would say when I missed the trench shovel it must have been along the period of time, about that it was breaking up, or it could have been broken up or it could be in a big brawl, but I believe it was something near the closing of it, because cars had been going down in there.

Q In other words, you missed your trench shovel about the time you believed the fight was over?

A Well, it could have been over about that time, about the time the fight was over.

Q What did you do when the fight was over?

A I went and asked for one.

Q Who did you go and ask for one?

A I didn't go to no particular one. I asked several different ones if they had a trench tool that didn't belong to them. I says mine is stenciled, you can at least tell, and I says whoever has it, you might as well turn it over, or turn it loose, and I says any way you tie it on your back, I can see it.

Q You went and asked various colored soldiers if they did not have a trench shovel that they didn't need?

A I didn't ask no particular ones. I asked at different barracks where I went.

Q But you went to different barracks and asked different ones if they didn't have a shovel they didn't need?

A I asked if they had an extra one.

Q Well, you asked several of them that night?

A That is when I was asking.

Q And you picked one up, too, didn't you?

A One was given to me.

Q Well, you took it back to your barracks, didn't you?

A Sure.

Q Did you report to anyone that your trench shovel was taken from your barracks?

A No, sir, I didn't.

Q No, you didn't. You just went ahead and got you another one, didn't you?

A Yes, sir, I did.

Defense: Colonel, when you get to a convenient stopping place, could I approach the bench with you?

Trial Judge Advocate: Well, let us do it now.

(Whispered discussion)

Q Who was it that gave you this extra trench shovel that you picked up that night?

A I don't remember who I got the shovel from.

Q Somebody gave you another trench shovel and you don't remember who it was?

A Yes, sir.

Q Now, think real hard and see if you can't tell the Court who it was that gave you that shovel.

A It could have been anyone, because I asked so many different ones. I didn't particularly care, to be frank about it, because I figured so long as I got one that was all that counted, because the old saying in the Army is, a good soldier never loses anything so long as he has got one. I didn't have to pay for it, for the one I lost, so everything was O.K.

Q After that you were not concerned where the one that you lost was?

A No, sir, I wasn't.

Q You told Maj. Beeks when he asked you a question whether you were in the orderly room that night, you said you were not?

A I wasn't.

Q How about Barracks 709, were you in those Barracks that night?

A Where is it at?

Q Come over here and I will show you (indicating).

A I wasn't in there.

Q Were you in Barracks 708?

A- No, sir.

Q You are sure you were not in Barracks 709?

A No, sir.

Q All right. Sit down a minute. Now, I want to ask you if it is not a fact that you and another accused sitting over there, and whose name I cannot mention, and Murray, didn't go into Barracks 709 that night and one of you would poke some of the Italians who were lying under the bed with a stick and as they would come out, the other one would swat them, didn't you do that?

A Not me.

Q It was not you?

A No, sir.

Q You heard Murray say that he saw you down there in the

Italian area that night?

A I heard Murray say he saw me coming out of the Italian area, but if Murray doesn't know me any better in the night than in the day, he really don't know me.

Q You heard him testify to that?

A Yes, sir.

Q And you say he did not testify to the truth?

A No, sir.

Q And Murray also said that you came over that night and said that the supply of trench shovels had run out before you got yours, and that you wanted a trench shovel, is that correct or not?

A I didn't tell him nothing about no supplies ever running out because for the particular reason I was one of the first to get a trench shovel.

Q It was not a question of your getting one of the trench shovels. I am asking you whether you did not say that that night that you did not receive a trench shovel and you came over to draw one and, you didn't get one, and you were looking for one?

A No, sir.

Q But you cannot tell us from whom you got a trench shovel, that extra one, that you picked up that night?

A I might have got one in there.

Q Oh, you think you might have gotten one in there?

A I don't remember who gave me that shovel.

Q In where might you have gotten one?

A If he was in the building where I got it why he could have heard me ask for one.

Q In which building did you get it in?

A I don't remember. I went to every building in our Company.

Q You were kind of afraid to try and get your own trench shovel, weren't you?

A I had to finish my pack and I didn't want to pay for one.

Q Well, you said awhile ago you wouldn't worry if it was lost then?

A Well, I wouldn't get a new one, but I figured I could get one.

Q So you were not worrying, it wasn't any worry to you when you lost your shovel so long as you got one?

A No, sir.

Q It didn't make any impression on you at all, where you

A got this extra shovel from?
 No, sir.

Q But it could have been that you went to the supply depot to get that extra shovel?

A It could not have been because that is in the orderly room, and I didn't go in there.

Q Could it have been that you went to one of the cooks?

A I might have gone to one of the cooks, but I know I didn't go to no supply room.

Q Well, when you asked whoever it was for this extra shovel, what did you say to him?

A Well, anybody that I asked I told them that my shovel was missing and that I would like to have another one, if they has got an extra one, I would like to have one.

Q You never told anybody you had drawn a trench shovel already?

A No, sir, I never told anyone.

Q But you are not sure where you got this trench shovel?

A No, sir.

Q Now, you heard the Witness Chapman come into this Court and under oath testify that when you were in the stockade, that you had said what messed you up was losing your shovel down there?

A He said that, but I didn't.

Q You deny having made that statement?

A I do.

Q How long has Chapmann known you?

A He could have known me ever since we went in the Company, we went in about the same time.

Q You and Chapman have never had any trouble, have you?

A No, we never have.

Q Did an M.P. either give or take a flashlight from you anytime that night?

A Neither one.

Q And you never did say that you lost anything down there in the Italian area to anyone?

A No, sir; I haven't lost anything down there.

Q Well you lost a trench shovel?

A I didn't lose it there, not down there. I left it on my bed.

Q Well, you don't know where that trench shovel was found?

A No, sir; because I didn't find it.

Q You didn't find it?

A No, sir.

Q And you didn't lose it, either?

A It was missing, anyway.

Q But the last time you saw it, it was just nestling supinely up on your bed there, somewhere?

A Yes, sir.

Q Well, about the time this fight was breaking up you missed your trench shovel?

A It might have been before, about that time.

Q Well within a few minutes after that fight broke up you went looking for another trench shovel, didn't you?

A Well, I was looking for a trench shovel. You say within a few minutes after the fight broke up. Now, I don't know exactly when the fight broke up, as I first stated.

Q Yes, I heard you.

A But you asked me if the fight was over and I presumed it was coming close to an end by the time, when I first missed my shovel, when I started to pack my bag. Whether it was over, or not, I wouldn't know.

Q Well, anyway, within a few minutes after this time you believed the shovel was missing and you went around looking for another trench shovel?

A Yes, sir. I felt it might just as well be that time as any other time. It was just when I missed it.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

President: Any questions by the Court? You are excused.

Witness excused.

President: The Court will recess to reconvene at 9:00 o'clock, Monday morning.

At this point a recess was taken 3:47 p.m., to reconvene at 9:00 o'clock on December 11th, 1944.

LEON JAWORSKI
Lt. Colonel, JAGD
Trial Judge Advocate